

1 **CHAPTER 854. DIVISION FOR BLIND SERVICES**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 **ON NOVEMBER 26, 2018,** THE TEXAS WORKFORCE COMMISSION PROPOSED THE
8 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **December 14, 2018**
11 Estimated End of Comment Period: **January 14, 2019**
12

13 The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 854,
14 relating to the Division for Blind Services:
15

- 16 Subchapter A. General Provisions and Program Operations, §§854.10 - 854.12
- 17 Subchapter B. License and Assignments, §§854.20 - 854.24
- 18 Subchapter C. Expectations of TWC and Managers, §§854.40 - 854.43
- 19 Subchapter D. BET Elected Committee of Managers, §§854.60 and 854.61
- 20 Subchapter E. Action Against a License, §§854.80 - 854.83

21
22 TWC proposes the repeal of the following sections of Chapter 854, relating to the Division for
23 Blind Services:
24

- 25 Subchapter N. Business Enterprises of Texas, §§854.200 - 854.217

- 26
- 27 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 28 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 29 **PART III. IMPACT STATEMENTS**
- 30 **PART IV. COORDINATION ACTIVITIES**

31
32 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

33 The purpose of the BET program is to provide training and remunerative employment
34 opportunities on state, federal, and private properties throughout Texas for Texans who are
35 legally blind. TWC is the state agency authorized to administer the BET program, which
36 operates under the authority of the federal Randolph-Sheppard Act (20 USC § 107 et seq.),
37 implementing regulations (34 CFR § 395.1 et seq.), and Chapter 355 of the Texas Labor Code.
38 Participants operate vending and food services on state, federal and other properties throughout
39 Texas, including office buildings, prisons, military installations, and highway safety rest areas.
40 All applicants for the program are qualified by and referred to BET by TWC Vocational
41 Rehabilitation (VR) Services. Although BET is not a VR program, it provides competitive
42 employment for VR customers and successful case closures for the VR program.
43

44 BET program managers collaborate with the federally mandated Elected Committee of Managers
45 (ECM), composed of elected licensed managers of BET facilities, to evaluate rules and policies
46 and to make recommendations. The BET rules were last revised in 2012 under BET's

1 predecessor agency, the Texas Department of Assistive and Rehabilitative Services (DARS). As
2 required by §854.212(d), before considering these proposed rule changes, TWC requested that
3 the ECM participate in rule drafting workshops conducted by the BET director to deliberate
4 regarding these proposed rules. Meetings were held between the ECM and the BET director to
5 obtain the ECM's recommendations on the proposed rule revisions and to solicit ECM proposals
6 on program improvement.
7

8 The TWC Chapter 854 Division for Blind Services proposed rule amendments include changes
9 to clarify procedures, update program operations, and improve operational transparency. Some of
10 the revisions are made in response to operational enhancements resulting from TWC's adoption
11 of Rapid Process Improvement methods. Other changes are designed to modernize the program
12 by addressing tax lien responsibilities and the monitoring of participants' compliance with state
13 and federal tax laws. Additional operational transparency is added by clarifying the eligibility
14 criteria for participation in the BET program and the opportunities for assignment and
15 advancement of licensed BET managers. Finally, because the ECM is an elected committee
16 composed of the licensed managers of BET facilities who vote on career advancement
17 assignment opportunities, it is important to ensure transparency and avoid the appearance of
18 conflict of interest. Revisions are proposed to enhance fair and equal treatment of program
19 participants by providing a framework for addressing conflicts of interest.
20

21 Pursuant to Texas Labor Code §352.101, TWC has integrated legacy DARS VR programs--VR
22 for individuals with visual impairments (Blind Services) and VR for individuals with other
23 disabilities (Rehabilitation Services)--into a single VR program. The integration has resulted in
24 the repeal of various subchapters within Chapter 854. The BET rules are currently in Chapter
25 854, Subchapter N, Division for Blind Services, and will be the only subchapter in Chapter 854.
26 Accordingly, the BET rules will be renumbered and moved into Subchapter A, which is renamed
27 to refer solely to the BET program.
28

29 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

30 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
31 therefore, are not discussed in the Explanation of Individual Provisions.)
32

33 **SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS**

34 **TWC proposes adding the following new sections to Subchapter A:**
35

36 **§854.10. Definitions**

37 New §854.10 replaces repealed §854.202 and updates many references to DARS and its
38 organizational structure, and replaces the word "person" with "individual." DARS DBS
39 definitions are removed. Additional necessary definitions are added, such as those for
40 "immediate family" and "substantial interest," to assist in the rules on conflict of interest.
41 "Application for Training" was added since this is the first requirement in being considered for a
42 license. One definition regarding instruction by TWC staff members was moved and re named,
43 but the definition remained unchanged.
44

45 **§854.11. General Policies**

1 New §854.11 replaces repealed §854.203 and revises many references to DARS, its legal
2 authority and its organizational structure, replacing the word "person" with "individual" and
3 "consumer" with "customer." Subcontracting is clarified to be under the purview and approval of
4 TWC. The rule also establishes a time frame of six months as the maximum for a subcontractor
5 to be assigned to a facility. The modification of this rule reflects the current operation of the
6 program and improves compliance with the governing statutes. The BET director's authorized
7 amount of funds on an emergency basis was increased, and more detail was provided on the type
8 of incident that may require emergency funding. The process for designating the temporary
9 management of an unassigned facility was revised to reflect how a manager is evaluated to
10 obtain the assignment and the role of the BET management and the local ECM in determining
11 who is assigned as the temporary manager. To ensure sound fiscal operations and adherence to
12 state and federal law, the manager's compliance with state and federal tax laws in running a
13 facility is imperative.

14
15 **§854.12. Consultants**

16 New §854.12 replaces repealed §854.204 and updates its provisions to remove the BET
17 administrator role. The rule is further updated to reflect the change from DARS DBS to TWC.
18 Subsection (d) is modified to specify that the state procurement requirements will be followed
19 when entering into a contract for a consultant and using facility proceeds to pay the consultant.

20
21 **SUBCHAPTER B. LICENSE AND ASSIGNMENTS**

22 **TWC proposes new Subchapter B, License and Assignments, as follows:**

23
24 **§854.20. Eligibility and License Application Process**

25 New §854.20 replaces repealed §854.205 and establishes the eligibility criteria that a customer
26 must meet to apply for the BET training component, which is a prerequisite for a BET license.
27 Proficiency in math, reading, writing, and adaptive technology must be demonstrated through an
28 assessment administered by the Criss Cole Rehabilitation Center (CCRC), as found in TWC
29 Chapter 856 Vocational Rehabilitation Services. BET is an employment outcome for customers
30 who are in the TWC VR program, as found in Chapter 856. The regional VR manager must
31 approve a customer applying for the BET training program.

32
33 **§854.21. BET Licenses and Continuing Education Requirement**

34 New §854.21 updates its §854.206 provisions to revise many references to DARS and its
35 organizational structure and to replace "person" with "individual." The rules addressing the
36 Continuing Education Requirement of a licensee were moved from §854.205 and revised solely
37 to reflect the agency name change from "DARS DBS" to "TWC."

38 **§854.22. Initial Assignment Procedures**

39 New §854.22 replaces repealed §854.207 and updates its provisions to replace "person" with
40 "individual," in addition to adding a requirement in subsection (b)(5) that the licensee must be in
41 compliance with state and federal tax laws in order to receive an initial assignment.

42
43 **§854.23. Career Advancement Assignment Procedures**

44 New §854.23 replaces repealed §854.207 and updates its provisions to address the selection,
45 transfer, and promotion for BET managers. The existing rule specifies eligibility requirements
46 for licensees to meet in order to apply for an available facility. The added eligibility requirements

1 include facility host requirements, such as criminal background checks, drug tests, and any other
2 host requirements. To ensure sound fiscal operations and adherence to state and federal law, the
3 manager's compliance with state and federal tax law is imperative and is a requirement for an
4 advanced assignment. The rule is further updated to reflect the agency name change from DARS
5 DBS to TWC.

6
7 **§854.24. Career Advancement Assignment Application**

8 New §854.24 replaces repealed §854.207 and updates its provisions to include electronic
9 submission of the application, notice of the available facility, and notice of the interview date,
10 place, and time. The rule is further updated to revise many references to DARS and its
11 organizational structure, and to replace "person" with "individual."

12
13 **SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS**

14 **TWC proposes new Subchapter C, Expectations of TWC and Managers, as follows:**

15
16 **§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables**

17 New §854.40 replaces repealed §854.208 and updates its provisions to revise many references to
18 DARS and its organizational structure, and to replace "person" with "individual." The updates
19 clarify that TWC is the owner of the fixtures, furnishings, and equipment. TWC establishes
20 expectations of the managers to maintain and sanitize the equipment and document maintenance
21 performed. Managers may face administrative action on their licenses if they do not follow the
22 TWC upkeep and maintenance schedule.

23
24 **§854.41. Set-Aside Fees**

25 New §854.41 replaces repealed §854.209 and updates its provisions to revise many references to
26 DARS and its organizational structure, and to replace "person" with "individual." The current
27 rate of 5 percent of net proceeds was added into the provisions. Subsection (e) was added to
28 clarify that if ECM disagrees with the action taken to establish a new set-aside fee rate after the
29 annual review, then the appeal process in §854.82 may be used.

30
31 **§854.42. Duties and Responsibilities of Managers**

32 New §854.42 replaces repealed §854.210 and updates its provisions to revise many references to
33 DARS and its organizational structure, and to replace "person" with "individual." Subsection (f)
34 is removed because this DARS DBS requirement is not consistent with TWC operation of the
35 BET program. As the owner of the equipment, TWC's purchasing of insurance will ensure
36 adequate protection coverage for both the state-owned equipment and the host facility. An
37 electronic mail address was added to subsection (l)(2) as most of the communication with the
38 managers from TWC is electronic. In subsection (o), assurances were added that materials
39 removed during an audit or review will be returned to the facility within 90 business days to
40 avoid disrupting the business practices of the BET manager. New subsection (p) clarifies the
41 responsibility of managers to maintain liability insurance coverage.

42
43 **§854.43. Responsibilities of the Texas Workforce Commission**

44 New §854.43 replaces repealed §854.211 and updates its provisions to reflect the agency change
45 from DARS DBS to TWC.

1 **SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS**

2 **TWC proposes new Subchapter D, BET Elected Committee of Managers, as follows:**

3
4 **§854.60. BET Elected Committee of Managers' Duties and Responsibilities**

5 New §854.60 replaces repealed §854.212 and updates its provisions to revise many references to
6 DARS and its organizational structure, and to replace "person" with "individual." Subsection (a)
7 has been updated to ensure compliance with 20 USC §107b(1) of Chapter 6A of Title 20, known
8 as the Randolph-Sheppard Act.

9
10 **§854.61. BET Elected Committee of Managers' Conflict of Interest.**

11 New §854.61 specifies when a conflict of interest may arise and what steps the ECM
12 representative shall take to address it. This includes the disclosure of the conflict of interest and
13 withdrawal from any action relating to the conflict.

14
15 **SUBCHAPTER E. ACTION AGAINST A LICENSE**

16 **TWC proposes new Subchapter E, Action Against a License, as follows:**

17
18 **§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance**

19 New §854.80 replaces repealed §854.213 and updates its provisions to revise many references to
20 DARS and its organizational structure, and to replace "person" with "individual."

21
22 **§854.81. Administrative Action Based on Unsatisfactory Performance**

23 New §854.81 replaces repealed §854.214 and updates its provisions to revise many references to
24 DARS and its organizational structure, and to replace "person" with "individual." Section 854.81
25 adds "advances" in subsection (a)(2), as this is another financial obligation that requires
26 repayment and failure to fulfill this obligation is a cause for administrative action. Under
27 subsection (a)(5), failure to comply with state and federal tax laws relating to the operation of the
28 facility was added as a reason for administrative action. The manager's compliance with state and
29 federal tax laws in operating a facility is imperative and a requirement for continued licensure. In
30 subsection (a)(10), additional clarification was made of the substances that would interfere with
31 the operation of the facility. Subsections (d)(2)(A) and (d)(2)(H) were modernized by adding an
32 e-mail address as a way of notifying licensees of the allegations and reasons that administrative
33 action is being considered.

34
35 **§854.82. Procedures for Resolution of Manager's Dissatisfaction**

36 New §854.82 replaces repealed §854.215 and updates its provisions to revise many references to
37 DARS and its organizational structure, and to replace "person" with "individual."

38
39 **§854.83. Establishing and Closing Facilities**

40 New §854.83 replaces repealed §854.216 and updates its provisions to revise many references to
41 DARS and its organizational structure, and to replace "person" with "individual."

42
43 **PART III. IMPACT STATEMENTS**

44 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
45 years that the rules will be in effect, the following statements will apply:

1 There are no additional estimated costs to the state and to local governments expected as a result
2 of enforcing or administering the rules.

3
4 There are no estimated cost reductions to the state and to local governments as a result of
5 enforcing or administering the rules.

6
7 There are no estimated losses or increases in revenue to the state or to local governments as a
8 result of enforcing or administering the rules.

9
10 There are no foreseeable implications relating to costs or revenue of the state or local
11 governments as a result of enforcing or administering the rules.

12
13 There are no anticipated economic costs to individuals required to comply with the rules.

14
15 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
16 communities as a result of enforcing or administering the rules.

17
18 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
19 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
20 Legislature, Regular Session (2017), (to be codified at Texas Government Code §2001.0045),
21 does not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's
22 three-member Commission to adopt rules necessary to integrate the vocational rehabilitation
23 programs, including recommending adopting rules to implement the integration. Therefore, the
24 exception identified in §2001.0045(c)(9) also applies.

25
26 Takings Impact Assessment

27 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
28 affects private real property, in whole or in part or temporarily or permanently, in a manner that
29 requires the governmental entity to compensate the private real property owner as provided by
30 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
31 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
32 would otherwise exist in the absence of the governmental action, and is the producing cause of a
33 reduction of at least 25 percent in the market value of the affected private real property,
34 determined by comparing the market value of the property as if the governmental action is not in
35 effect and the market value of the property determined as if the governmental action is in
36 effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under
37 Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action,
38 as discussed elsewhere in this preamble, is to align TWC Ch. 854 BET rules with TWC's
39 operation of the program.

40
41 The proposed rulemaking action will not create any additional burden on private real property.
42 The proposed rulemaking action will not affect private real property in a manner that would
43 require compensation to private real property owners under the United States Constitution or the
44 Texas Constitution. The proposal also will not affect private real property in a manner that
45 restricts or limits an owner's right to the property that would otherwise exist in the absence of the

1 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
2 Government Code, Chapter 2007.

3
4 Government Growth Impact Statement

5 TWC has determined that during the first five years the proposed amendments will be in effect:

- 6 --the proposed amendments will not create or eliminate a government program;
- 7 --implementation of the proposed amendments will not require the creation or elimination of
- 8 employee positions;
- 9 --implementation of the proposed amendments will not require an increase or decrease in future
- 10 legislative appropriations to TWC;
- 11 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 12 --the proposed amendments will not create a new regulation;
- 13 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 14 --the proposed amendments will not change the number of individuals subject to the rules; and
- 15 --the proposed amendments will not positively or adversely affect the state's economy.

16
17 Economic Impact Statement and Regulatory Flexibility Analysis

18 TWC has determined that the rules will not have an adverse economic impact on small
19 businesses or rural communities, as these rules place no requirements on small businesses or
20 rural communities.

21
22 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
23 significant negative impact upon employment conditions in the state as a result of the rules.

24
25 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of
26 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
27 rules will be to comply with statutory requirements, unify and clarify rule language, update
28 terminology, and improve consistency within the BET program.

29
30 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
31 within TWC's legal authority to adopt.

32
33 **PART IV. COORDINATION ACTIVITIES**

34 In the development of these rules for publication and public comment, TWC sought the
35 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
36 concept paper regarding these rule amendments to the Boards for consideration and review on
37 May 8, 2018. TWC also conducted a conference call with Board executive directors and Board
38 staff on May 11, 2018, to discuss the concept paper. The ECM was consulted with during the
39 development of the proposed rules. During the rulemaking process, TWC considered all
40 information gathered in order to develop rules that provide clear and concise direction to all
41 parties involved.

42
43 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
44 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
45 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.

1 Comments must be received or postmarked no later than 30 days from the date this proposal is
2 published in the *Texas Register*.

3
4 The rules are proposed under Texas Labor Code §355.012(a), authorizing the commission to
5 promulgate rules necessary to implement Chapter 355, and under Texas Labor Code
6 §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to
7 administer the commission's policies.

8
9 The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

1 CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS

2
3 SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

4
5 §854.10. Definitions.

6
7 The following words and terms, when used in this subchapter, shall have the following
8 meanings, unless the context clearly indicates otherwise. Unless expressly provided
9 otherwise, words in the present or past tense include the future tense, and the singular
10 includes the plural and the plural includes the singular.

- 11
12 (1) Act--Randolph-Sheppard Act (20 USC, Chapter 6A, §107 et seq.).
- 13
14 (2) Application for Training--The "BET Application for Training" form used by
15 VR customers to apply for prerequisite trainings that is a required prerequisite
16 to be considered for a license.
- 17
18 (3) Assignment Application--The "BET Facility Assignment Application" form
19 used by licensees to apply for a facility.
- 20
21 (4) BET--Business Enterprises of Texas.
- 22
23 (5) BET assignment--The document that sets forth the terms and conditions for
24 management of a BET facility by the individual named as manager.
- 25
26 (6) BET director--The administrator of Business Enterprises of Texas; or, if there
27 is no individual in that capacity, the individual designated by the VRD director
28 to perform that function; or if there is none, the VRD director.
- 29
30 (7) BET facility--Automatic vending machines, cafeterias, snack bars, cart service,
31 shelters, counters, and other equipment that may be operated by BET managers
32 and that are necessary for the sale of newspapers, periodicals, confections,
33 tobacco products, foods, beverages, and other articles or services dispensed
34 automatically or manually and prepared on or off the premises in accordance
35 with all applicable health laws, and including the vending or exchange of
36 tickets for any lottery authorized by state law.
- 37
38 (8) BET manual--"Business Enterprises of Texas Manual of Operations," which
39 contains this subchapter adopted by the Agency and related instructions and
40 procedures by which BET facilities are to be managed.
- 41
42 (9) Blind (individual who is)--An individual whose central visual acuity does not
43 exceed 20/200 in the better eye with correcting lenses or whose visual acuity,
44 if better than 20/200, is accompanied by a limit to the field of vision in the
45 better eye to such a degree that its widest diameter subtends an angle of no

1 greater than 20 degrees. In determining whether an individual is blind, there
2 shall be an examination by a physician skilled in diseases of the eye, or by an
3 optometrist, whichever the individual shall select.

4 (10) Business day--A day on which state agencies are officially required to be open
5 during their normal business hours.

6
7 (11) ECM--Elected Committee of Managers--A committee representative of BET
8 licensees pursuant to 20 USC §107b-1(3) of the Randolph-Sheppard Act.

9
10 (12) Expendables--Items that require a low capital outlay and have a short life
11 expectancy, including, but not limited to, small wares, thermometers, dishes,
12 glassware, flatware, sugar and napkin dispensers, salt and pepper shakers,
13 serving trays, kitchen knives, spreaders, serving spoons, and ladles.

14
15 (13) Immediate family--Any individual related within the first degree of affinity
16 (marriage) or consanguinity (blood) to the individual involved.

17
18 (14) Individual with a significant disability--An individual who has a severe
19 physical or mental impairment that seriously limits one or more functional
20 capacities (such as mobility or communication).

21
22 (15) Initial assignment--The first BET facility to which a manager is assigned after
23 being licensed.

24
25 (16) Instruction by Agency staff members--Instructions that are proper and
26 authorized and in accordance with applicable statutes and program rules,
27 regulations, and procedures.

28
29 (17) Level 1 facility--A BET facility that in the previous year generated a net
30 income after set-aside fees equal to or less than 170 percent of the median net
31 income after set-aside fees of all BET managers for the previous year or, in the
32 case of a new BET facility, is reasonably expected to generate that income.

33
34 (18) Level 2 facility--A BET facility that in the previous year generated a net
35 income after set-aside fees greater than 170 percent of the median net income
36 after set-aside fees of all BET managers for the previous year or, in the case of
37 a new BET facility, is reasonably expected to generate that income.

38
39 (19) Licensee--A blind individual who has been licensed by the Agency as qualified
40 to apply for and operate a BET facility, and which shall have the same
41 meaning assigned to "blind licensee" in 34 CFR §395.1.

42
43 (20) Manager--A licensee who is operating a BET facility, and which shall have the
44 same meaning assigned to "vendor" in 34 CFR §395.1.

45
46 (21) Net sales--All sales, excluding sales tax.

1
2 (22) Other income--Money received by a manager from sources other than direct
3 sales, such as vending commissions or subsidies.

4
5 (23) Sanitation and cleaning supplies--Items that require a low capital outlay and
6 have a short life expectancy, such as, by way of illustration and not limitation,
7 mops, brooms, detergents, bleach, gloves, oven mitts, trash bags, food
8 wrapping supplies, foil, and cleaning supplies for food equipment.

9
10 (24) State property--Lands and buildings owned, leased, or otherwise controlled by
11 the State of Texas; and equipment and facilities purchased and/or owned by the
12 State of Texas.

13
14 (25) Substantial interest--An individual has a substantial interest if:

15
16 (A) in an assignment decision:

17
18 (i) the individual will benefit financially from the assignment decision;
19 and;

20
21 (ii) funds received by the individual from the business exceed 10 percent
22 of the individual's gross income for the previous year; or

23
24 (B) if he or she is related to an individual in the first degree of affinity or
25 consanguinity who has a substantial interest as defined in subparagraph
26 (A) of this definition.

27
28 (26) Vending machine--For the purpose of assigning vending machine income, a
29 coin- or currency-operated machine that dispenses articles or services, except
30 those machines operated by the United States Postal Service for the sale of
31 postage stamps or other postal products and services. Machines providing
32 services of a recreational nature and telephones shall not be considered to be
33 vending machines.

34
35 **§854.11. General Policies.**

36
37 (a) Objectives. BET objectives shall be:

38
39 (1) to provide employment opportunities for qualified individuals; and

40
41 (2) to provide an ongoing training program for managers that encourages them to
42 advance their upward mobility career opportunities within the program.

43
44 (b) Relationship of BET to VRD Services. The intent of BET, as authorized by the Act
45 and the Texas Labor Code, is to stimulate and enlarge the economic opportunities for
46 the citizens of Texas who are legally blind by establishing a vending facility program

1 in which individuals who need employment are given priority in the operation of
2 vending facilities selected and installed by the Agency. The Agency is required to
3 administer BET in accordance with the Agency's vocational rehabilitation objectives.
4 Therefore, a customer receiving services from VRD whose employment goal is to be
5 a licensed manager shall have reached an employment outcome, as that term is used
6 in the Rehabilitation Act of 1973, as amended, when the customer is licensed by the
7 Agency and is managing a BET facility. The licensed manager shall not be
8 considered an employee of the Agency or of state or federal government.
9

10 (c) Full-time employment. Managing a BET facility shall constitute full-time
11 employment. "Full-time" shall mean "being actively engaged in the management of a
12 BET facility for the number of hours necessary to achieve satisfactory operation of
13 the facility." The manager shall be available for necessary visits by Agency staff to
14 allow inspection, advice, and consultation as may be required to ensure satisfactory
15 operation. "Management" means "the personal supervision of the day-to-day
16 operation of the assigned BET facility by the assigned manager."
17

18 (d) Subcontracting. The management of a BET facility shall not be subcontracted by a
19 licensed manager except for temporary periods of time approved by the Agency and
20 in those circumstances in which the Agency considers that subcontracting the
21 operation of some parts of the facility is in the best interest of BET. Potential
22 justifications for subcontracting include the following: business strategies in which a
23 portion of the facility operation may be subcontracted so that the assigned manager
24 may focus on another aspect of the facility; temporary events not to exceed six
25 months in which the assigned manager is not capable of management duties due to
26 illness, injury, or other events, as approved by the Agency; and the need for business
27 expertise and resources beyond that available from BET. Any subcontracting shall
28 require the prior written approval of the Agency. The approval of any subcontract is
29 at the discretion of the Agency. This subsection does not apply to equipment or
30 machines allowed to be placed within the facility and not owned by or arranged for
31 by the Agency.
32

33 (e) Availability of funds. The administration of BET and the implementation of these
34 policies are contingent upon the availability of funds for the purposes stated in this
35 subchapter.
36

37 (f) BET manual. All BET policies adopted by the Agency shall be included in the BET
38 manual. The BET director shall ensure that the manual and any revisions to it are
39 provided to each licensee electronically or in the format requested by the licensee.
40 The licensee shall be responsible for reading the manual and acknowledging in
41 writing that he or she has read and understands its contents. The BET director shall
42 ensure that the BET manual contains procedures from which licensees may obtain
43 assistance in understanding BET policies and procedures.
44

1 (g) Accessibility of BET materials. All information produced by and provided to
2 licensees by the Agency shall be in an accessible format. When possible, these
3 materials are sent in the format requested by the licensee.

4
5 (h) Nondiscrimination.

6
7 (1) VR and BET participants. the Agency shall not discriminate against any blind
8 individual who is participating in or who may wish to participate in BET on
9 the basis of sex, age, religion, color, creed, national origin, political affiliation,
10 or physical or mental impairment, if the impairment does not preclude
11 satisfactory performance.

12
13 (2) BET facilities. Managers shall operate BET facilities without discriminating
14 against any present or prospective supplier, customer, employee, or other
15 individual who might come into contact with the facility on the basis of sex,
16 age, religion, color, creed, national origin, political affiliation, or physical or
17 mental impairment.

18
19 (i) Emergencies. The BET director is authorized to expend funds on an emergency basis
20 to protect the state's investment in a BET facility not to exceed \$50,000 in a fiscal
21 year or \$5,500 per facility incident due to riot, war, fire, earthquake, hurricane,
22 tornado, flood, or other disasters, governmental restrictions, labor disturbances, or
23 strikes.

24
25 (j) Temporary management. From time to time it becomes necessary to designate a
26 temporary manager to an unassigned facility to ensure uninterrupted service to the
27 host and customers. Temporary assignments shall be for the period stated in the
28 assignment document. After the time frame stated in the assignment expires, the
29 BET director shall review the temporary assignment and shall review the assignment
30 every 90 days to determine the need for continuation of the temporary assignment.
31 The temporary assignment shall terminate when a new manager is assigned to the
32 facility. The Agency shall choose temporary managers from licensees; if a licensee is
33 not available, the Agency may contract with a private entity. Before the Agency
34 offers a licensee or a private entity a temporary opportunity, the regional BET staff,
35 at a minimum, shall evaluate the following: the individual's willingness to serve for
36 the stated temporary term; the qualifications and experience relevant to the current
37 opportunity; and the documented management compliance history, along with other
38 factors set out in Agency rules. The geographic BET staff shall provide its findings
39 to the local ECM and seek a joint recommendation to BET management. BET
40 management shall make the final determination. When more than one individual is
41 recommended at the local level, BET management shall first give preference to
42 managers available within the local ECM region and thereafter to the individual
43 manager with a lower average historical income, to improve his or her income
44 temporarily.

1 (k) Compliance with tax laws. Licensees and managers shall comply with state and
2 federal tax laws and shall not have a tax lien against them.

3
4 **§854.12. Consultants.**

5
6 (a) If the Agency determines that a consultant is necessary to assist a manager or
7 protect the interests of the Agency, the Agency shall contract with a consultant
8 and may pay for the consultant out of the facility proceeds. The Agency shall
9 not contract with a consultant when it possesses the expertise and staffing level
10 to provide the consulting services.

11
12 (b) If the Agency determines that a consultant is needed to assist a manager, the
13 BET director shall consult with the manager before contracting with a
14 consultant. The final authority, however, for contracting with a consultant shall
15 rest with the Agency.

16
17 (c) All consultant contracts entered into by the Agency for the provision of
18 business support and mentoring services to the manager shall not exceed three
19 years in duration, provided, however, that the contract may be extended for
20 additional periods not to exceed one year each. No contract shall be extended
21 until the manager has been consulted. The final discretion to extend the
22 contract shall rest with the Agency.

23
24 (d) If the Agency determines it necessary to contract with a consultant to protect
25 the interests of the Agency, the Agency shall enter into a separate agreement
26 for that purpose with terms and conditions that the Agency may consider
27 appropriate. The consultant will be procured in accordance with state
28 contracting requirements with consideration of factors including business
29 expertise, operational capability, experience, financial resources, and price in
30 relation to the needs of the Agency.

31
32 **SUBCHAPTER B. LICENSE AND ASSIGNMENTS**

33
34 **§854.20. Eligibility and Application Process.**

35
36 (a) Prerequisites for training. To be eligible for BET training, a customer desiring a
37 career with BET as an employment outcome in the vocational rehabilitation program
38 shall:

39
40 (1) be at least 18 years of age;

41
42 (2) be a United States citizen residing in Texas (a birth certificate or other
43 appropriate documentation must be submitted with the application);

44
45 (3) be legally blind as defined by these rules;
46

- 1 (4) be proficient in math, reading, and writing, as demonstrated through CCRC
2 testing, as well as in adaptive technology, including word processing
3 spreadsheet use and e-mail communication, as demonstrated through a CCRC
4 final assessment;
- 5
- 6 (5) have the health and stamina required to perform safely the basic functions of a
7 manager;
- 8
- 9 (6) have mobility skills to operate a BET facility safely, as documented by a VR
10 counselor or assessment verified by an orientation and mobility instructor;
- 11
- 12 (7) satisfactorily perform a Work Evaluation Training conducted with a current
13 BET operator;
- 14
- 15 (8) not have engaged in substance abuse for the previous 12 months; and
- 16
- 17 (9) be in compliance with state and federal tax laws and not be subject to any tax
18 liens.
- 19

20 (b) Application process. Each eligible customer interested in applying for BET training
21 must obtain approval and an application from the regional VR manager. The
22 application must be submitted to the BET director. An eligible customer has
23 successfully participated in the CCRC program. Interviews will be conducted by the
24 BET director and an appointed panel. An e-mail notification of the results will be
25 sent to the applicant.

26

27 §854.21. BET Licenses and Continuing Education Requirement

28

29 (a) Natural individuals. Licenses to manage a BET facility shall be issued only to
30 natural individuals

31

32 (1) Prerequisites. No individual may be licensed until the individual has
33 satisfactorily completed all required BET training and otherwise continues to
34 satisfy the criteria for entry into BET.

35

36 (2) Issuance. A license issued by the Agency shall contain the name of the licensee
37 and the date of issue. The license shall be signed by the VRD director and the
38 BET director on behalf of the Agency and the State of Texas.

39

40 (3) Display. The license or a copy of the license shall be displayed prominently in
41 each BET facility to which the manager is assigned.

42

43 (4) Property right. A license shall not create any property right in the licensee and
44 shall be considered only as a means of informing the public and other interested
45 parties that the licensee has successfully completed BET training and is
46 qualified and authorized to operate a BET facility.

1
2 (5) Transferability. A license is not transferable.
3

4 (6) Term. A license issued by the Agency shall be valid for an indefinite period,
5 subject, however, to termination or revocation under conditions specified in
6 these rules that pertain to termination of a license for reasons other than
7 unsatisfactory performance or administrative action.
8

9 (b) Annual continuing education requirements for licensees:

10
11 (1) The Agency and ECM conduct an annual training conference for all licensees
12 to inform them of new BET developments and to provide instruction on
13 relevant topics to enhance licensees' business competence and upward mobility
14 in the program. Licensees must attend the Agency's training conference or an
15 Agency-approved alternative training event every year to maintain their
16 licenses and eligibility to bid on available facilities. They must document their
17 attendance at the Agency training conference by signing attendance records
18 provided at the conference. A licensee who is unable to attend the Agency
19 training conference may satisfy the continuing education requirement by
20 attending a BET-approved course or training conference. Such training
21 includes, but is not limited to, attending the national training conferences for
22 blind vendors conducted by the Randolph-Sheppard Vendors of America or by
23 the National Association of Blind Merchants, or by completing a business-
24 related course from the Hadley School for the Blind or a business-related
25 course offered by an accredited community college.
26

27 (2) Licensees wishing to attend an alternative training course or conference must
28 request approval through their local Agency staff. The local Agency staff
29 forwards the request to the BET director for approval. The licensee must also
30 provide proof of successful completion of any business-related course or
31 attendance at a training conference through the local Agency staff to the BET
32 director to receive credit for attendance. All costs associated with travel,
33 lodging, meals, and registration when attending any training other than the
34 Agency training conference will be the responsibility of the licensee.
35

36 (3) Licensees may use an alternative approved training course or training
37 conference to satisfy the continuing education requirement only if they are
38 unable to attend the Agency training conference because of personal medical
39 reasons, the death of a family member, a medical emergency or serious
40 medical condition of an immediate family member, or if there is not an Agency
41 training conference offered during the licensee's 12-month evaluation period.
42 Licensees must provide written documentation of the medical issues or death
43 of a family member to their local Agency staff.
44

1 (4) Licensees who fail to complete continuing education requirements may be
2 subject to administrative action up to and including termination of their
3 licenses.

4
5 **§854.22. Initial Assignment Procedures.**

6
7 (a) This section defines the process for the initial assignments of managers. It is the goal
8 of the process to provide a fair, unbiased, and impartial process for selection,
9 transfer, and promotion.

10
11 (b) Initial assignment. When an individual completes BET training, the BET director
12 shall make the initial assignment for the newly licensed individual. The initial
13 assignment shall be for a minimum of 12 months. The BET director shall make the
14 assignment based on the following factors, including but not limited to:

15
16 (1) availability of a Level 1 facility;

17
18 (2) recommendations from the BET training specialist and the ECM chair;

19
20 (3) licensee's training records;

21
22 (4) licensee's geographical concerns;

23
24 (5) licensee's compliance with state and federal tax laws and not be subject to any
25 tax liens; and

26
27 (6) any other circumstances on a case-by-case basis.

28
29 **§854.23. Career Advancement Assignment Procedures.**

30
31 (a) Career advancement assignments. This section defines the process for the career
32 advancement assignments of managers. It is the goal of the process to provide a fair,
33 unbiased, and impartial process for selection, transfer, and promotion.

34
35 (1) Availability. All career advancement opportunities depend on the availability
36 of BET facilities. No facility with a projected annual income equal to the
37 annual median income level of all managers after set-aside fees shall be used
38 for an initial assignment unless it has been advertised and made available to all
39 licensees in the BET program and no one has been assigned to the facility as a
40 result of the advertising process.

41
42 (2) Notice. As BET facilities become available and ready for permanent
43 assignment, written notice of the availability shall be given to all licensees
44 within 30 business days.

1 (3) On-site visits. An advertised facility shall be available for on-site visits upon
2 reasonable notice by licensees interested in that facility assignment.

3
4 (b) Eligibility. To apply for an available facility, a licensee must meet the following
5 requirements:

6
7 (1) The licensee shall have successfully managed a BET facility for a minimum
8 of one year.

9
10 (2) The licensee shall be current on all accounts payable for the 12 months before
11 the date of the facility announcement. Accounts payable include known debts
12 to state and federal entities as well as any BET business-related debt.
13 "Current" means "performing in accordance with written established or
14 alternate payment plans associated with the accounts payable debts."

15
16 (3) The licensee shall be in compliance with state and federal tax laws and not be
17 subject to any tax liens.

18
19 (4) The licensee shall not be on probation under § 854.41 (relating to
20 Administrative Action Based on Unsatisfactory Performance).

21
22 (5) The licensee shall meet eligibility requirements of the facility's host
23 organization, including, but not limited to:

24 (A) criminal background checks; and

25 (B) drug tests.

26
27 (6) The licensee shall not have submitted more than one insufficient funds check
28 to the Agency within the 12 months before the date of the facility
29 announcement.

30
31 (7) The licensee shall not have submitted more than one late report within the 12
32 months before the date of the facility announcement.

33
34 (8) If unassigned, the licensee shall have fulfilled all resignation requirements in
35 the licensee's most recent facility assignment or be displaced and eligible to
36 apply for a facility.

37
38 (9) The manager shall have an inventory of merchandise and expendables in the
39 manager's current facility that the Agency has determined sufficient for its
40 satisfactory operation.

41
42 (10) The licensee shall satisfy the Agency that he or she can maintain the
43 merchandise and expendables required for the available facility.
44

1 (11) A licensee who has been placed on probation is not eligible for promotion
2 and transfer for 30 days from the effective date of the most recent release
3 from probation.

4
5 (12) A licensee who has been placed on probation twice within a 12-month period
6 is not eligible for promotion or transfer for six months from the effective date
7 of the most recent release from probation.

8
9 (13) A licensee who has been placed on probation three times within a two-year
10 period is not eligible for promotion or transfer for one year from the effective
11 date of the most recent release from probation.

12
13 **§854.24. Career Advancement Assignment Application.**

14
15 (a) BET application deadline. A licensee may apply for an available facility by applying
16 electronically, by hand, or by mail not later than the 12th business day (exclusive of
17 date of mailing) after the date the facility notice was published. The submission date
18 shall be:

19
20 (1) the date the application is delivered electronically or by hand to the Agency;
21 or

22
23 (2) three days after postmark of the application in the US postal service,
24 whichever is earlier; or

25
26 (3) the date the application is delivered to an overnight courier.

27
28 (b) BET application contents. A copy of the current form of the application shall be
29 included in the BET manual. The substance of the application form shall not be
30 modified except by action of the Agency. Modifications shall be provided to all
31 licensees before their effective date. Upon request by the manager and before the
32 submission deadline, assistance is available from the local BET staff and ECM
33 representative in completing the BET application form.

34
35 (c) Preliminary review of applications. The Agency staff and the ECM representative in
36 each geographic area in which the applying licensees are located shall review all
37 applications from their areas and shall verify the applicants' eligibility. If an ECM
38 representative is an applicant for an available BET facility, the ECM chair shall
39 appoint another ECM member for the review. Completed applications shall then be
40 forwarded to the BET director, who shall provide copies to the ECM and Agency
41 staff in the area in which the available facility is located.

42
43 (d) Level 1 assignments. Assignments to Level 1 facilities shall be made by the BET
44 director after reviewing the assessments of all applicants conducted by the ECM
45 representative and Agency staff, and the subsequent recommendations, for the
46 regions in which the available facilities are located. Panel members shall rank all

1 eligible applicants using a worksheet that weights the applicant's performance by 50
2 percent for the applicant's most recent annual performance evaluation completed
3 before the date of the facility advertisement, 25 percent for interview performance,
4 and 25 percent for the submitted BET application form. Any other materials
5 submitted by the applicants shall be provided by the same deadline as the BET
6 application form and will be included in the 25 percent interview performance
7 weighting component.

8
9 (e) Level 2 assignments. For Level 2 assignments, the following procedures, in addition
10 to Level 1 procedures, shall apply:

11
12 (1) Business plan. An applicant shall submit a business plan to the BET director
13 no later than the 20th business day after the postmark date on the notice of
14 facility availability. Upon request by an applicant, Agency staff in the area in
15 which the available facility is located shall provide the applicant with a
16 standard packet of information that is necessary to prepare the business plan.
17 Agency staff shall deliver the packet to the applicant no later than the third
18 business day after receiving a request.

19
20 (2) Establishment of a pool of impartial and qualified individuals. The Agency
21 shall establish and maintain a pool of qualified individuals who:

22
23 (i) have no personal, professional, or financial interest that would conflict with
24 the objectivity of the individual;

25
26 (ii) neither have nor have had any association with the Agency or BET before
27 being considered as a pool member; and

28
29 (iii) have at least five years' experience in business at a managerial or
30 executive level, including experience in budget preparation and
31 administration, personnel supervision or management, and administration
32 of business plans or equivalents to business plans in the sector of business
33 in which the individual has experience.

34
35 (3) Evaluation of business plans. All business plans shall be reviewed and
36 evaluated by an individual chosen at random from the pool of impartial and
37 qualified individuals. Business plans shall be evaluated and scored based on a
38 scoring system of 100 points. The evaluations and scores shall then be
39 forwarded to the BET director for consideration by the selection panel in the
40 selection process.

41
42 (4) Selection panel. A selection panel consisting of one representative from the
43 ECM, one Agency staff member, and one individual from the pool of
44 impartial and qualified individuals shall be chosen by means of a computer
45 program that selects randomly from a database. The selection of each panel
46 member shall be from among all individuals within their respective

1 categories, except that the impartial member may not be the individual who
2 evaluated the business plans. If the member of a category of panel members
3 who is selected is unable or refuses to serve, the BET director shall use the
4 same method of random selection until three members are chosen.

5
6 (5) Presiding officer. The impartial panel member shall serve as the presiding
7 officer of the selection panel.

8
9 (6) Interview notices. At least 10 business days before the convening of the
10 selection panel, applicants shall be notified electronically, or, upon request,
11 by first-class mail, of the date, place, and time of the selection panel
12 interview.

13
14 (7) Selection panel materials. Completed applications, business plans, and each
15 applicant's most recent performance evaluation completed before the date of
16 the facility advertisement shall be provided to the selection panel members at
17 least five business days before the date that the selection panel is to convene.

18
19 (8) Duties of selection panel. The selection panel shall review the documents
20 provided and interview the applicants. The panel shall prepare a tabulation
21 sheet for each applicant on which the panel member shall enter the business
22 plan score and performance evaluation score previously received by the
23 applicant. A third score shall be awarded by each panel member for the
24 interview performance of the applicant. Each interview shall be rated on a
25 maximum score of 100, based on such areas as the quality of the applicant's
26 presentation, knowledge of the submitted business plan, and preparation for
27 the assignment. Each applicant shall be interviewed on the same areas and
28 given a similar amount of time to present his or her case. While questions
29 must be tailored to each applicant's business plan, presentation, and
30 knowledge, the panel should strive to conduct the interviews as similarly as
31 possible. The selection panel shall then rank the top three applicants. An
32 applicant's ranking shall be determined after weighting each applicant's
33 business plan score by 25 percent, weighting each applicant's most recent
34 performance evaluation completed before the date of the facility
35 advertisement by 50 percent, and weighting the average interview score
36 awarded by panel members by 25 percent. If there is a tie between applicants,
37 the panel awards one point to the applicant who has the greater length of
38 accumulated service as an assigned manager in a BET facility according to
39 BET records. The selections shall be transmitted to the BET director, who
40 shall in turn notify the highest ranked eligible applicant of the decision of the
41 selection panel. The available facility shall be offered to the eligible
42 applicants in order of ranking.

43
44 (9) Reports of improper contact. Members of the selection panel shall report
45 alleged improper contacts to the BET director or VRD director. Improper
46 contact is defined as communication with a member of the selection panel to

1 influence or manipulate the selection of an applicant for the facility being
2 considered for assignment by offering a thing or act of value, including
3 promises of future benefit, or by threat. Nothing contained in this section,
4 however, prohibits any licensee from endorsing or supporting any candidate
5 for selection by furnishing a letter or other document to that effect to be
6 included with the applying licensee's application. After the selection panel
7 concludes its responsibilities, each panel member shall be required to sign a
8 statement certifying whether the member had, or had knowledge of, improper
9 contact during the selection proceedings.

10
11 (10) Process for investigating reports of improper contact. When alleged improper
12 contact is reported, each applicant for the facility under consideration and the
13 ECM chair shall be informed of the occurrence of an alleged improper
14 contact. The information provided to the applicants shall describe the nature
15 of the alleged improper contact but shall not divulge the identities of any
16 individuals allegedly participating in such improper contact. Each applicant
17 may object to continuation of the existing panel and request that a new panel
18 be formed to select the manager for the available facility. The BET director,
19 upon the request of any applicant for the facility, shall determine whether the
20 improper contact requires that the panel be disbanded and a new panel
21 formed. In making that decision, the BET director shall consider all relevant
22 factors, including the objections, if any, of the applicants, to determine
23 whether the improper contact is likely to influence the decision of the
24 selection panel. If the BET director determines that the improper contact
25 occurred and is likely to influence the selection process, the BET director
26 shall direct the panel to disband and a new panel be formed to consider the
27 selection for the available facility. The BET director shall inform all
28 applicants of the decision to continue the selection process with the existing
29 panel, or to form a new panel, and shall state the basis of the decision. The
30 actions prescribed as a consequence of improper contact set forth in rules
31 pertaining to administrative actions shall apply whether or not any improper
32 contact results in the panel being disbanded.

33
34 (11) Exceptions to assignment and selection procedures. Unusual circumstances
35 may require exceptions to assignment and selection procedures. Exceptions
36 to these procedures shall be made only if the circumstance is not covered by
37 assignment procedures and failure to react to the circumstance would be
38 detrimental to BET or a licensee. Notwithstanding anything in this section,
39 no exceptional procedure shall result in the removal of a manager from a
40 facility except for reasons contained in rules pertaining to administrative
41 actions. Assignment and selection decisions that are exceptions to these
42 procedures shall be made by the BET director after discussing relevant
43 information with the ECM chair and receiving the chair's recommendation. If
44 a decision contrary to the ECM chair's recommendation is made, the BET
45 director shall provide a written explanation of the decision to the ECM chair.
46

1 **SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS**

2
3 **§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.**

4
5 (a) Survey. When a BET facility becomes available for assignment, Agency staff shall
6 conduct a survey of the site to determine the fixtures, furnishings, and equipment
7 required to allow the facility to operate in accordance with projections by Agency
8 staff of the potential business model for the facility. When the facility is an existing
9 one, the survey shall consider the need for replacement or repair of fixtures,
10 furnishings, and equipment.

11
12 (b) Facility plan. Agency staff shall prepare a detailed listing of the requirements for
13 fixtures, furnishings, and equipment for the facility, including specifications for each
14 item required and a site plan of the facility depicting the placement of the fixtures,
15 furnishings, and equipment within the facility. The facility shall be consistent with
16 local ordinances as well as state and federal requirements.

17
18 (c) Acquisition, placement, and installation. When satisfied with the plan for the
19 fixtures, furnishings, and equipment required for the facility, Agency staff shall
20 procure the necessary fixtures, furnishings, and equipment to be placed or installed
21 in the facility in accordance with the approved plans. With previous approval, the
22 Agency may also purchase necessary fixtures, furnishings, and equipment for
23 placement away from the facility for off-site storage or other approved reason. A
24 manager's responsibilities as noted in rule apply to off-site equipment.

25
26 (d) Ownership.

27
28 (1) All state fixtures, furnishings, and equipment within the facility shall at all
29 times remain the property of the State of Texas. The facility manager's use of
30 all such fixtures, furnishings, and equipment shall be as a licensee only and in
31 accordance with the BET Equipment Loan Agreement.

32
33 (2) The Agency shall have the sole authority to direct, control, transfer, and
34 dispose of the fixtures, furnishings, and equipment.

35
36 (e) Modifications. No modifications or alterations shall be made to state-owned fixtures,
37 furnishings, or equipment by any individual, firm, or entity without the express prior
38 written approval of the Agency.

39
40 (f) Upkeep and maintenance.

41
42 (1) The manager assigned to a facility shall be provided with manuals,
43 instructions, and guides electronically or in a format requested by the manager.
44 These documents for state-owned fixtures, furnishings, and equipment within
45 the facility should be in an accessible format.

1 (2) It shall be the responsibility of the manager to keep fixtures, furnishings, and
2 equipment clean and sanitary and to perform maintenance required or
3 recommended by the manufacturers or vendors of the fixtures, furnishings, and
4 equipment. This must be in accordance with the BET instructions and
5 equipment manuals.

6
7 (3) The manager shall keep and maintain accurate records of all maintenance
8 performed on fixtures, furnishings, and equipment. Any failure or refusal of
9 the manager to perform the maintenance referred to in this section shall result
10 in the manager being required to reimburse the Agency for the cost or expense
11 resulting from the failure or refusal and may result in further administrative
12 action.

13
14 (g) Repairs and replacements.

15
16 (1) Upon notification, the Agency shall be responsible for all necessary repairs of
17 any of the state-owned fixtures, furnishings, and equipment located within the
18 facility except for repairs necessitated by the negligence, abuse, or misuse of
19 the fixtures, furnishings, or equipment by the manager or the manager's
20 employees. Failure to comply with manufacturer 's or BET's maintenance and
21 preventive care requirements shall be considered negligence, abuse, or misuse.
22 The cost of repairs necessitated by negligence, abuse, or misuse by the
23 manager or the manager's employees shall be the sole responsibility of the
24 manager. Failure to make such repairs may result in administrative action
25 under §854.81.

26
27 (2) The manager shall follow the instructions as established by BET to facilitate
28 the timely necessary repairs and for the payment for such services. The
29 instructions provide specific procedures for initiating repairs by the manager
30 and a list of approved vendors for repairs. The instructions provided to each
31 manager are published revised from time to time.

32
33 (3) Under no circumstances is a manager authorized to have the cost of repairs
34 charged to the Agency or to have repairs made by anyone other than approved
35 vendors unless Agency staff has given the manager authority to do so in
36 writing. Each vendor included in the approved list of vendors for repairs shall
37 be informed by Agency staff of this prohibition and of the procedures for
38 authorized repairs and for payment for services.

39
40 (4) Agency staff members on their own initiative or upon request shall determine
41 the need for replacement of any fixtures, furnishings, or equipment, and they
42 shall report it to the BET director. If the BET director authorizes the expense,
43 the replacement fixtures, furnishings, and/or equipment shall be purchased,
44 contingent upon availability of BET funds.

1 (5) Fixtures, furnishings, and equipment shall not include sanitation and cleaning
2 supplies. Each manager of a facility shall be responsible for replacing all such
3 items with items of a quality comparable to those being replaced and originally
4 furnished by the Agency.

5
6 (h) Initial inventory of merchandise and expendables for newly licensed managers. The
7 Agency shall furnish without charge the initial inventory of merchandise and
8 expendables for the initial assignment of a newly licensed licensee. The initial
9 inventory of merchandise and expendables shall be sufficient to assist the manager
10 with starting the business.

11
12 (i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and
13 expendables.

14
15 (1) The manager shall maintain an inventory of merchandise, sanitation and
16 cleaning supplies, and expendables in the same quantities as were transferred
17 to the manager upon assignment to the facility. If the Agency determines that
18 changed circumstances require different quantities of merchandise, sanitation
19 and cleaning supplies, and expendables, the Agency shall communicate in
20 writing to the manager the new quantities required. If the new quantities of
21 merchandise, sanitation and cleaning supplies, and expendables are necessary
22 to provide for the satisfactory operation of the facility, those new quantities of
23 inventory must be maintained by the manager.

24
25 (2) Managers assigned to any facility other than their initial assignment in Texas
26 shall acquire the merchandise, sanitation and cleaning supplies, and
27 expendables as determined by the Agency to be sufficient to satisfactorily
28 operate the facility. To effectively expedite the changeover in facilities, when a
29 facility is already stocked with merchandise, sanitation and cleaning supplies,
30 and expendables, the existing stock shall become part of the required inventory
31 stock level of the incoming manager. The amount owed by the incoming
32 manager for the existing stock shall be the amount agreed to by the affected
33 parties. If the existing inventory is the property of the state, the amount owed
34 by the incoming manager shall be the amount paid with state funds.

35
36 (j) Purchases on credit. During the first three years of being in the program, managers
37 must notify the Agency in advance of any purchase on credit of merchandise,
38 sanitation and cleaning supplies, and expendables.

39
40 (k) Obtaining an advance from the Agency for initial inventory. A manager may apply
41 to the Agency for an advance to purchase an initial inventory of merchandise,
42 sanitation and cleaning supplies, and expendables. The manager must satisfy an
43 advance received from the Agency to purchase merchandise on subsequent
44 assignments within a 12-month period and must make monthly payments in the
45 amount established by the Agency. The granting of an advance is discretionary and
46 may be done only under the following conditions:

- 1
- 2 (1) The manager shall justify to the Agency, in writing, the need for the advance
- 3 and why the funds are not available from other sources.
- 4
- 5 (2) The manager shall submit evidence satisfactory to the Agency that the
- 6 financing has been sought from at least two commercial financial institutions.
- 7
- 8 (3) The manager shall demonstrate to the Agency his or her ability to repay the
- 9 advance within 12 months.
- 10
- 11 (4) Managers with outstanding balances on advances are not eligible for transfer to
- 12 another assignment.
- 13

14 (1) Transfer of fixtures, furnishings, equipment, and inventory of merchandise, sanitation
15 and cleaning supplies, and expendable items. When a manager is assigned to an
16 existing BET facility, the responsibility for the fixtures, furnishings, and equipment
17 of that facility, as well as its inventory of merchandise, sanitation and cleaning
18 supplies, and expendable items shall be transferred to the incoming manager. The
19 BET director shall follow the procedures for transferring the equipment between the
20 incoming and outgoing managers to ensure that the managers have full knowledge
21 of the nature and condition of the items being transferred.

22 **§854.41. Set-Aside Fees.**

- 23
- 24
- 25 (a) the Agency requires managers to pay a set-aside fee based on the monthly net
26 proceeds of their BET facilities. The purposes of requiring this payment are:
- 27
- 28 (1) to promote to the greatest possible extent the concept of a manager being an
 - 29 independent business individual;
 - 30
 - 31 (2) to cause BET to be to the greatest extent possible, self-supporting;
 - 32
 - 33 (3) to encourage and stimulate growth in BET; and
 - 34
 - 35 (4) to provide incentives for the increased employment opportunities for blind
 - 36 Texans.
- 37
- 38 (b) Use of funds. To the extent permitted or required by applicable laws, rules, and
39 regulations, the funds collected as set-aside fees shall be used by the Agency for the
40 following purposes:
- 41
 - 42 (1) maintenance and replacement of equipment for use in BET;
 - 43
 - 44 (2) purchase of new equipment for use in BET;
 - 45
 - 46 (3) management services;

1
2 (4) ensuring a fair minimum return to managers; and

3
4 (5) the establishment and maintenance of retirement or pension funds, health
5 insurance contributions, and provision for paid sick leave and vacation time if
6 it is so determined by a majority vote of managers assigned to a facility, after
7 the Agency provides to each such manager information on all matters relevant
8 to these proposed purposes.

9
10 (c) Method of computing net proceeds.

11
12 (1) Net proceeds are the amount remaining from the sale of merchandise of a BET
13 facility, all vending machine income, and other income accruing to the
14 manager from the facility after deducting the reasonable and necessary cost of
15 such sale, but excluding set-aside charges required to be paid by the manager.
16 The manager shall not remove any items from the inventory or other stock
17 items of the facility unless the manager pays for those items at the actual cost.

18
19 (2) Costs of sales that may be deducted from net sales to calculate net proceeds in
20 a reporting period shall be limited to:

21 (A) cost of merchandise sold;

22 (B) wages paid to employees;

23
24 (C) payroll taxes; and

25
26 (D) the following reasonable miscellaneous operating expenses that are
27 directly related to the operation of the BET facility. -Discretionary
28 expenses, not to exceed 1.5 percent of the monthly net sales, or \$150,
29 whichever is greater. Expenses must be verifiable, invoiced, and directly
30 related to the operation of the facility. Acceptable expenses include:

31 (i) rent and utilities authorized in the permit or contract;

32 (ii) business taxes, licenses, and permits;

33 (iii) telecommunication services;

34 (iv) liability, property damage, and fire insurance;

35 (v) worker's compensation insurance;

36 (vi) employee group hospitalization or health insurance;

1 (vii) employee retirement contributions (the plans must be IRS-approved
2 and not for the manager);

3
4 (viii) janitorial services, supplies, and equipment;

5
6 (ix) bookkeeping and accounting services;

7
8 (x) trash removal and disposal services;

9
10 (xi) service contracts on file with the Agency;

11
12 (xii) legal fees directly related to the operation of the facility (legal fees
13 directly or indirectly related to actions against governmental entities are
14 not deductible);

15
16 (xiii) medical expenses directly related to accidents that occur to
17 employees at the facility, not to exceed \$500;

18
19 (xiv) purchase of personally owned or leased equipment that has been
20 approved by the Agency for placement in the facility;

21
22 (xv) repairs and maintenance to personally owned or leased equipment
23 that has been approved by the Agency to be placed in the facility;

24
25 (xvi) consumable office supplies;

26
27 (xvii) exterminator or pest control services; and

28
29 (xviii) mileage expenses for vehicles required for the direct operation of
30 vending facilities at the rate and method allowed by the Internal
31 Revenue Service at the time the expenses are incurred.

32
33 (3) All reports by managers shall be accompanied by supporting documents
34 required by the Agency.

35
36 (d) Method of computing monthly set-aside fee. The monthly set-aside fee of each
37 manager shall be a percentage of the net proceeds of the facility as determined in
38 accordance with this section. The provisions relative to the percentage required to be
39 paid as set-aside fees shall be reviewed by the BET director with the active
40 participation of ECM at least annually each state fiscal year. The purpose of the
41 review shall be to determine whether the percentage needs to be adjusted in order to
42 meet the financial needs of the program. The percentage assessed against the net
43 proceeds of facilities may be lowered or raised to meet the needs of the program.
44 ECM shall be provided with all relevant financial and other information concerning
45 the financial requirements of the program no fewer than 60 days before a review by
46 the BET director in which the percentage is to be considered. For the period from the

1 effective date of this amended rule until BET director undertakes his or her first
2 annual review of the set-aside fee, the percentage shall be 5 percent.
3

4 (e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the
5 annual review, then ECM may choose to use the appeal process in §854.215.
6

7 (f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's
8 monthly statement of facility operations. The manager shall use BET Monthly
9 Facility Report, BE-117, to report monthly activities.
10

11 (g) Adjustments to monthly set-aside fee.
12

13 (1) To encourage managers to hire individuals with disabilities, managers shall
14 deduct from their set-aside payment up to 50 percent of the wages or salary
15 paid to an employee who is blind or who has another disability or disabilities
16 (as defined by the Americans with Disabilities Act) during any month up to an
17 amount not to exceed 5 percent of the set-aside payment amount for that
18 month, or \$250, whichever is less. A manager may make this deduction for any
19 number of employees who are blind or have another disability as long as that
20 deduction from the set-aside payment amount does not exceed 25 percent of
21 the total set-aside payment that is due, or \$1,250, whichever is less. The
22 manager shall provide documentation to BET as required by the Agency to
23 verify such employment and the right to the reduction in set-aside fees. For the
24 purposes of this paragraph, "who is blind or who has another disability" does
25 not include:
26

27 (A) the manager;
28

29 (B) an individual who is blind or who has another disability at the first
30 degree of consanguinity or affinity to the manager; or
31

32 (C) an individual who is blind or who has another disability claimed as a
33 dependent, either in whole or in part, on the manager's federal income
34 tax return.
35

36 (2) Adjustments provided for in paragraph (1) of this subsection shall not apply for
37 any month in which the set-aside fee is not paid in a timely manner.
38

39 (3) To encourage managers to file their monthly statement of facility operations
40 and pay their monthly set-aside fee promptly, managers shall have their
41 monthly set-aside fee increased by 5 percent of the total amount due if either
42 their monthly statement or the monthly set-aside fee is not received in a timely
43 manner, pursuant to these rules. None of the terms of this rule shall be
44 construed to create a contract to pay interest, as consideration for the use,
45 forbearance, or detention of money, at a rate more than the maximum rate

1 permitted by applicable laws and rules. This adjustment to the set-aside fee is
2 not imposed as interest.

3
4 **§854.42. Duties and Responsibilities of Managers.**

5
6 (a) Managers shall comply with applicable law, the rules contained in this chapter,
7 written agreements with hosts, the BET assignment, the requirements of the BET
8 manual, and instruction by BET staff.

9
10 (b) Managers shall comply with procedures prescribed by the Comptroller of Public
11 Accounts for the payment of sales taxes and provide evidence to the Agency of
12 timely sales tax remittances.

13
14 (c) Managers shall not engage in conduct that demonstrably jeopardizes the Agency's
15 right, title, and interest in the BET facility, its equipment, or the lease or agreement
16 with the property managers.

17
18 (d) Managers shall maintain a professional appearance and act in a professional manner
19 while managing a BET facility.

20
21 (e) Managers shall open a commercial business account in which they maintain
22 sufficient funds to operate the BET facility.

23
24 (f) Managers shall hire sufficient employees to ensure the efficient operation of the BET
25 facility and to provide satisfactory service to customers. If the facility is remodeled
26 or if operational areas change, the manager must have sufficient employees on hand
27 for the necessary shutdown and reopen cleanup.

28
29 (g) Managers shall be actively engaged in the management of a BET facility and be
30 actively working the number of hours necessary to achieve satisfactory operation of
31 the facility. With prior notice from the Agency, managers shall be available for all
32 necessary visits to the facilities for advice, consultation, and inspections of the
33 facility. If the business is closed for remodel or improvement, the manager shall be
34 available for the opening, closing, and overall security of the business and assets.

35
36 (h) Managers shall take appropriate actions to correct deficiencies noted on BET facility
37 audits or reviews within seven business days.

38
39 (i) Managers shall provide satisfactory service to the BET facility host and customers.

40
41 (j) Managers shall notify the Agency in advance if they intend to be absent from their
42 assigned facility for more than two days.

43
44 (k) Managers shall provide BET staff with the following information and shall notify
45 BET staff of changes to any item no more than 10 business days after a change
46 occurs:

- (1) the BET facility telephone number;
- (2) a mailing address and an e-mail address to which BET correspondence is to be sent;
- (3) a phone number for use in emergencies; and
- (4) the manager's preferred accessibility format.

(l) Managers are accountable to the Agency for the proceeds of the business.

(m) Managers shall keep all records supporting the monthly facility report for three calendar years.

(n) Managers shall report the actual value of resale inventory by taking a physical count in the facility each month and submitting a written quarterly inventory (March, June, September, and December) with the monthly facility report.

(o) Managers, upon request by the Agency, shall make available all records pertinent to the facilities to which they have been assigned for audit or review. Any materials removed from the facility will be returned within 90 business days, unless evidence needs to be preserved.

(p) Managers shall maintain liability insurance coverage sufficient to indemnify the Agency if Agency funding is not available or insufficient for such purposes.

§854.43. Responsibilities of the Texas Workforce Commission.

(a) Management services. The Agency shall provide each manager with regular and systematic management services, which shall, at a minimum, include:

- (1) explanations of Agency rules, procedures, policies, and standards;
- (2) recommendations on how the facility can be made more profitable for the manager;
- (3) techniques to develop positive relationships with customers, assistants, and management of the host organization;
- (4) possible solutions to problems recognized by the manager or brought to the manager's attention by Agency staff or the facility host;
- (5) continuing education and training courses and opportunities for managers designed to enhance skills, productivity, and profitability; and

1 (6) information about laws, rules, and regulations affecting the operation of a BET
2 facility.

3
4 (b) Training. The Agency shall assist ECM in conducting a special training seminar for
5 all licensees each year to inform them of new BET developments and to provide
6 instruction on new, relevant topics to enhance upward mobility.

7
8 (c) Facility operating conditions. The Agency shall establish the conditions for operation
9 of a BET facility in accordance with this subchapter and any requirements of the
10 host. The operating conditions shall include, among other things, pricing-ranges
11 requirements, hours of operation, and menu items or product lines. The Agency may
12 revise the operating conditions from time to time as market conditions warrant. The
13 final authority and ultimate responsibility for determining the price ranges to be
14 charged for products sold through BET facilities shall rest with the Agency.

15
16 (d) BET financial data. Upon request, the Agency shall provide licensees with access to
17 BET financial data. Also upon request, Agency staff shall assist the licensee in
18 interpreting the data.

19
20 (e) Inventory payment. When a manager leaves the manager's initial assignment, the
21 Agency shall pay the manager or the manager's heirs the value of the usable stock
22 and supplies above the amount provided to the manager upon initial assignment.

23 24 **SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS**

25 26 **§854.60. BET Elected Committee of Managers' Duties and Responsibilities.**

27
28 (a) Authority. The Elected Committee of Managers (ECM) is created and shall operate
29 under 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard
30 Act.

31
32 (b) Relationship to the Agency. ECM shall be presumed as the sole representative of all
33 licensees to the Agency in matters contained in the Randolph-Sheppard Act and
34 implementing regulations requiring the active participation of the ECM. Active
35 participation means an ongoing process of good-faith negotiations between ECM and
36 the Agency in the development of BET policies and procedures before
37 implementation. The Agency shall have the ultimate responsibility for the
38 administration and operation of all aspects of BET and has final authority in
39 decisions affecting BET.

40
41 (c) Relationship to licensees.

42
43 (1) It shall be the sole responsibility of the licensees who elect the members of
44 ECM to ensure that the individuals elected represent all licensees.

1 (2) ECM shall, in addition to all other matters set forth in this subchapter or by law
2 or regulation affecting the administration of BET, act as an advocate for
3 licensees and shall strive to improve and expand BET and make it profitable
4 and successful to the greatest extent possible for the mutual benefit of the
5 Agency and of the legally blind Texans who participate in the program.
6

7 (d) BET policies, rules, and procedures. In all matters related to policies and rules, the
8 Agency has the ultimate responsibility and the ultimate authority for their
9 establishment and adoption. ECM shall actively participate in the consideration of
10 significant BET decisions and in deliberations of rules and policies affecting BET.
11 Whenever the Agency or ECM wishes to consider policies or rules related to BET,
12 the Agency shall request that ECM participate in the Agency rule-drafting
13 workshops to be conducted by the BET director. The BET director will work with
14 ECM in a good-faith effort to agree in matters related to rule and policy changes.
15

16 (e) BET administrative decisions. In matters concerning the administration of BET, the
17 Agency holds the ultimate responsibility and authority for making administrative
18 decisions affecting BET. The BET director shall establish and maintain a continuing
19 dialogue and exchange of information with ECM about decisions regarding the
20 administration of BET and shall seek ECM input and advice on all significant
21 decisions affecting the administration of the program. In cooperation with the ECM
22 chair and other members of ECM that the ECM chair considers necessary and
23 appropriate, the BET director shall develop and implement methods of establishing
24 and maintaining the dialogue and exchange of information. The methods developed
25 shall be set out in detail in a written format and shall be included in the BET manual.
26

27 (f) Exclusions from participation. ECM, its members, and BET managers are not
28 employees, officers, or officials of the State of Texas. Therefore, ECM shall not
29 participate in any decision-making process regarding Agency personnel, personnel
30 policies, or personnel administration.
31

32 (g) Structure. ECM shall, to the extent possible, be composed of licensees who are
33 representative of all licensees in BET based on such factors as geography and facility
34 type and size. Two representatives shall be elected from each designated ECM
35 region created by the Agency with the active participation of ECM and as regions
36 may be revised or modified.
37

38 (h) Qualifications. ECM shall establish qualifications for candidates as well as the
39 procedures for voting, tabulating, and announcing results. The Agency shall provide
40 such advice and counsel as may be requested by ECM to accomplish all elections of
41 representatives to ECM.
42

43 (i) Term of office. The term of office for ECM members shall be two years, beginning
44 on January 1 following the election. Even- and odd-numbered districts shall alternate
45 election years. Any ECM member elected to fill a vacancy shall serve the remainder
46 of the unexpired term of the manager who vacated a position.

1
2 (j) Meetings. ECM shall meet once during each calendar year to elect officers and
3 additionally as it may establish by bylaw. The ECM chair shall provide a written
4 meeting agenda to the BET director 10 business days before each meeting.

5
6 (k) Internal procedures of ECM. ECM shall establish bylaws to govern its internal
7 operation and order of business and shall provide the Agency with a copy.

8
9 (l) Travel expenses.

10
11 (1) Expenses for travel, meals, lodging, or other related expenses incurred by
12 ECM representatives must be preapproved by the Agency.

13
14 (2) When representing a manager at a full evidentiary hearing, the ECM
15 representative shall be reimbursed for travel, meals, and lodging at the rate
16 allowed for travel by Agency staff members.

17
18 **§854.61. BET Elected Committee of Managers' Conflict of Interest.**

19
20 (a) The ECM representative shall immediately disclose any conflict of interest to all
21 parties and shall withdraw from all matters related to the conflict. Final determination
22 of a conflict of interest shall be made by the Agency.

23
24 (b) The ECM representative shall not use the position for private gain or act in a manner
25 that creates the appearance of impropriety.

26
27 (c) The ECM representative may not vote or make recommendation on any BET
28 promotion or transfer matter that would provide direct financial benefit to the ECM
29 representative individually or the ECM representative's immediate family or on
30 matters of the provision of services by the member or the entity the member
31 represents.

32
33 (d) Before a discussion, vote, recommendation, or decision on any promotion or transfer
34 matter before ECM, if a representative or an individual in the immediate family of
35 such representative has a substantial interest in the assignment being considered, that
36 ECM representative shall disclose the nature and extent of the interest or relationship
37 and shall abstain from voting or making a recommendation on or in any other way
38 participating in the decision on the matter.

39
40 **SUBCHAPTER E. ACTION AGAINST A LICENSE**

41
42 **§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance.**

43
44 (a) Causes for termination. The license of a licensee shall be terminated upon the
45 occurrence of any one of the following:

1 (1) The licensee's visual acuity is improved by any means to the point at which the
2 licensee no longer satisfies the definition of legally blind.

3
4 (2) The licensee becomes otherwise permanently disabled and as a result of such
5 permanent disability is unable to perform the essential functions of operating
6 and maintaining a BET facility. Being permanently disabled is having a
7 condition that is medically documented and has existed or is expected to exist
8 for at least 12 months. The determination of permanently disabled shall be
9 made by the VRD director or designee after review of medical documentation
10 and other information relevant to the issue. Other information relevant to the
11 issue shall include recommendations from Agency staff and ECM, pertinent
12 information from the licensee's BET file or provided by the licensee, and
13 reports of examinations or evaluations, if any, obtained by the Agency and the
14 licensee.

15
16 (3) The licensee is unassigned and has not accepted assignment offers or applied
17 for an assignment when facilities are available for a period of six consecutive
18 months. The six-month deadline may be extended by periods of 30 days when
19 facilities are not available for assignment. Any unassigned period of 12 months
20 or more requires retraining for the licensee to become eligible to bid for, or be
21 assigned to, available facilities.

22
23 (b) Examination and evaluation. In any situation in which the vision or other disability
24 of a licensee is at issue with respect to termination of a license, the Agency or the
25 licensee may require an examination or evaluation by professionals to determine
26 whether the licensee is otherwise permanently disabled and because of the permanent
27 disability is unable to perform the essential functions of operating and maintaining a
28 BET facility. The reports of such professionals shall be furnished to the Agency and
29 the licensee. Any failure of the licensee to participate in required examinations or
30 evaluations shall be grounds for administrative action.

31
32 (c) Restoration of license. A license terminated under the provisions of this section may
33 be restored at the discretion of the Agency if the condition or conditions causing the
34 termination were resolved satisfactorily. In considering a decision with respect to
35 whether to restore a license that was terminated according to this section, the VRD
36 director shall consult with appropriate BET staff members, the ECM chair, and any
37 advocate for the licensee and shall consider all pertinent information and
38 documentation provided by any of the individuals described in this subsection.

39
40 (d) Conditional restoration. If the VRD director determines that a license that was
41 terminated according to this section should be restored, the VRD director may
42 authorize the restoration of the license on any reasonable basis, such as participation
43 in continued medical treatment or therapy, or completion of refresher or other
44 courses of training.

45
46 **§854.81. Administrative Action Based on Unsatisfactory Performance.**

1
2 (a) Causes for administrative action based on unsatisfactory performance. One or more
3 of the following acts or omissions by a manager shall subject a manager to
4 administrative action for unsatisfactory performance:

5
6 (1) Failing to operate the assigned facility as set forth in the permit or contract
7 with the host and/or in the manager's record of assignment unless prior written
8 approval to operate the facility in another manner has been obtained from the
9 Agency.

10
11 (2) Failing to pay money that is due from the operation of the facility, including,
12 but not limited to, taxes, fees, advances, or assessments to a governmental
13 entity or supplier, or knowingly giving false or deceptive information to or
14 failing to disclose required information to or misleading in any manner a
15 governmental entity, including the Agency, or a supplier.

16
17 (3) Failing to file required financial and other records with the Agency or preserve
18 them for the time required by this subchapter.

19
20 (4) Failing to cooperate in a timely manner with audits conducted by the Agency
21 or other state or federal agencies.

22
23 (5) Failing to be in compliance with state and federal tax laws relating to the
24 operation of the facility, as demonstrated by a tax lien.

25
26 (6) Failing to maintain insurance coverage required by these rules.

27
28 (7) Using BET equipment or facility premises to operate another business.

29
30 (8) Failing to properly maintain facility equipment in a clean and operable
31 condition within the scope of the manager's level of maintenance authorization.

32
33 (9) Intentionally abusing, neglecting, using, or removing facility equipment
34 without prior written Agency authorization.

35
36 (10) Operating a facility under the influence of substances that interfere with the
37 operation of the facility, including alcohol and illegal or prescription drugs.

38
39 (11) Operating a BET facility in a manner that demonstrably jeopardizes the
40 Agency's investment in the facility.

41
42 (12) Using privileged information about an existing facility to compete with the
43 Agency for the facility.

44
45 (13) Failing to comply with any federal or state law prohibiting discrimination and
46 failure to ensure that services are provided without distinction on the basis of

1 race, gender, color, national origin, religion, age, political affiliation, or
2 disability.

3
4 (14) Failing to maintain the necessary skills and abilities for effectively managing a
5 facility.

6
7 (15) Using a facility to conduct unlawful activities.

8
9 (16) Failing to comply with the manager's responsibilities under applicable law, this
10 subchapter, the requirements of the BET manual, or any instruction by Agency
11 staff.

12
13 (17) Communicating or causing another individual to communicate with a member
14 of a selection panel or an applicant for a facility then being considered for
15 assignment for the purpose of influencing or manipulating the selection of an
16 applicant by offering to give a thing or act of value, including promises of
17 future benefit, or by threat.

18
19 (18) Failing to complete annual continuing education requirements.

20
21 (b) Administrative action pending an appeal. The Agency may at its discretion suspend
22 administrative action pending the outcome of an appeal.

23
24 (c) Types of administrative actions. The five types of administrative actions that are
25 based on unsatisfactory performance are as follows:

26
27 (1) Written reprimand. Written reprimand is a formal statement describing
28 violations of applicable law, this subchapter, the requirements of the BET
29 manual, or any instruction by Agency staff.

30
31 (2) Probation. Probation is allowing a licensee to continue in BET to satisfactorily
32 remedy a condition that is not acceptable under this subchapter. If the
33 condition causing probation is satisfactorily remedied within the time periods
34 specified in the written notice of probation, the probation will be lifted. If the
35 unacceptable condition is not remedied within the time specified, additional
36 and more serious administrative actions may ensue. When a licensee who has
37 been on probation two times in a three-year period qualifies for probation for
38 the third time within those three years, the licensee's license may be revoked
39 according to Agency rules.

40
41 (3) Loss of facility. Loss of facility is the removal of a manager from the
42 manager's current facility for administrative reasons when the manager's
43 actions or inactions endanger the Agency's investment in the facility.

44
45 (4) Termination. Termination is the revocation of a license and the removal of the
46 licensee from BET.

1
2 (5) Emergency removal of manager.
3

4 (A) A manager may be summarily removed from a facility in an emergency.
5 An emergency shall be considered to exist when the Agency, in
6 consultation with the ECM chair, determines that some act or acts or
7 some failure to act of that manager or any individual who is an
8 employee, server, or agent of such manager, will, if such removal does
9 not occur:

10
11 (i) result in a clear danger to the health, safety, or welfare of any
12 individual or to the property of any individual in or around the
13 facility; or

14
15 (ii) result in a deterioration of the existing or future relationship with
16 the host, thereby putting the continuation of the facility in jeopardy;
17 or

18
19 (iii) present a clear potential of substantial loss or damage to the
20 property of the State of Texas.

21
22 (B) In any case in which a manager has been summarily removed from a
23 facility on an emergency basis for any of the reasons set forth in
24 subparagraph (A) of this paragraph, the manager shall be entitled to have
25 a hearing about the necessity of the removal within 10 days after the
26 removal has occurred.

27
28 (C) The time period for the hearing may be extended only by mutual
29 agreement of the manager and the Agency under the following
30 circumstances: if an official holiday of the State of Texas falls within the
31 period, then the period shall be extended by the time of the holiday; or, if
32 the services of an arbitrator cannot be obtained in time to hold the
33 hearing within the period, then the period shall be extended by the time
34 necessary to obtain the services of an arbitrator and schedule the hearing.

35
36 (D) If the manager desires to have a hearing, the manager shall notify the
37 Agency in writing within 48 hours following the removal. The written
38 notification need state only the name of the manager, the location of the
39 facility, and that the manager desires to have a hearing about the need for
40 summary removal. The request may be delivered to the BET director, the
41 VRD director, or any local BET staff member in the geographic region
42 in which the facility is located.

43
44 (E) Upon receipt of any such request, the BET director shall obtain the
45 services of an arbitrator from the American Arbitration Association
46 (AAA) or other similar organization to conduct the hearing.

1
2 (F) The manager shall be notified of the date, time, and place of the hearing.
3 To the extent possible, the hearing shall be conducted in an area near the
4 location of the facility.
5

6 (G) The hearing shall be conducted in accordance with the rules of AAA,
7 except that the arbitrator shall be requested to announce orally a decision
8 at the conclusion of the hearing.
9

10 (H) If the arbitrator determines that no emergency necessitating the removal
11 of the manager exists, then the manager shall be immediately restored to
12 the operation of the facility.
13

14 (I) No determination made as a result of the hearing shall operate to
15 prejudice the rights of the manager to proceed with a grievance in
16 accordance with the terms of this subchapter and the Act.
17

18 (d) Administrative procedures.
19

20 (1) The Agency shall decide what administrative action to take based on the
21 seriousness of the violation, the damage to BET facilities and/or equipment,
22 and the licensee's record.
23

24 (2) Upon receipt of information that indicates that administrative action may be
25 appropriate, the Agency shall take the following actions before deciding
26 whether to take administrative action:
27

28 (A) The Agency shall notify the licensee in writing of the allegations and
29 reasons that administrative action is being considered. The notice shall
30 either be hand-delivered and read to the licensee, or be delivered to the
31 licensee's work, e-mail address, or home address.
32

33 (B) The licensee shall have five business days to respond to the notice, either
34 in person or in writing. The response shall be made to the individual
35 designated in the notice. After receiving the licensee's response, the
36 Agency shall decide what administrative action, if any, is appropriate. If
37 no response is received from the licensee in a timely manner, the Agency
38 shall decide without the licensee's response what administrative action, if
39 any, will be taken.
40

41 (C) If a decision is made to issue a written reprimand, the written reprimand
42 will be accompanied by a summary of the evidence justifying the
43 reprimand, suggested steps for correcting the violation, and the
44 consequences of not correcting the violation. All reprimands shall
45 contain notice of the licensee's right to appeal the reprimand and a

1 statement that failure to correct the violation may result in further
2 administrative action.

3
4 (D) If a decision is made to place a licensee on probation, the Agency shall
5 deliver to the licensee a letter of probation containing the following:

6
7 (i) the specific reasons for probation;

8
9 (ii) the remedial action required to remove the licensee from probation;

10
11 (iii) the time within which the remedial action must take place;

12
13 (iv) the consequences of failure to take remedial action within the
14 prescribed time frame; and

15
16 (v) notice of the licensee's right to appeal.

17
18 (E) Upon satisfactory completion of the remedial action outlined in the letter
19 of probation, a licensee shall be removed from probation.

20
21 (F) Failure of the licensee to complete remedial requirements within the
22 prescribed time frame shall result in one or more of the following
23 actions:

24
25 (i) required training;

26
27 (ii) extension of probation;

28
29 (iii) restrictions on applying for another facility;

30
31 (iv) removal from the facility; or

32
33 (v) termination of license.

34
35 (G) If, after the manager has had an opportunity to respond, a decision is
36 made that sufficient grounds exist to remove the manager from a facility,
37 the Agency shall notify the manager in writing by hand delivery or
38 certified mail with a return receipt requested that the manager's
39 assignment to the BET facility has been terminated and the manager
40 must vacate the facility. The removal letter shall contain the following
41 information:

42
43 (i) specific reasons for removal from the facility;

44
45 (ii) actions required by the manager, if any;

1 (iii) requirements for obtaining reassignment; and

2
3 (iv) notice of the manager's right to appeal under the Act.

4
5 (H) If, after the manager has had an opportunity to respond, a decision is
6 made that sufficient grounds exist for termination, the Agency shall
7 notify the manager in writing by hand delivery, e-mail, or certified mail
8 with a return receipt requested that the Agency has decided that
9 sufficient cause exists to terminate the manager's license and the
10 manager must vacate the facility. The termination letter shall contain:

11
12 (i) specific reasons for termination;

13
14 (ii) actions required by the licensee, if any;

15
16 (iii) procedures for applying for any other Agency services for which the
17 individual may be eligible; and

18
19 (iv) notice of the licensee's rights under the Randolph-Sheppard Act.

20
21 (3) The provisions of paragraph (2) of this subsection notwithstanding, pending a
22 determination with respect to administrative action, a manager may be
23 removed from a facility if the Agency considers such removal to be in the best
24 interest of BET and if efforts to correct the deficiencies have been
25 unsuccessful.

26
27 (4) During the license termination process, the manager shall not be eligible for
28 assignment to any other BET facility.

29
30 (e) Before termination of a license, the Agency shall afford the licensee an opportunity
31 for a full evidentiary hearing.

32
33 **§854.82. Procedures for Resolution of Manager's Dissatisfaction.**

34
35 (a) Appealable actions. This section provides the procedures for licensees who are
36 dissatisfied with the Agency's action arising from the operation of BET.

37
38 (b) Actions not subject to appeal. The phrase "the Agency's action arising from the
39 operation of BET" in subsection (a) of this section does not include the following
40 actions of the Agency:

41
42 (1) the hiring, firing, or discipline of Agency employees;

43
44 (2) the challenge of federal or state law, or rules previously approved by the
45 Secretary of Education under the Act; or

1 (3) an action by the Agency unless it is alleged that the action is in violation of
2 applicable law, this subchapter, the requirements of the BET manual, or any
3 instruction by Agency personnel, or is unreasonable. "Unreasonable" shall
4 mean "without rational basis or arbitrary and capricious."
5

6 (c) Agency discretion and sovereign immunity. The Agency does not waive its right and
7 duty to exercise its lawful and proper discretion. The Agency does not waive its
8 sovereign immunity.
9

10 (d) Remedies. Remedies available to resolve dissatisfaction shall correct the action
11 complained of from the earlier time of:
12

13 (1) agreement by the parties about an appropriate remedy, or
14

15 (2) a final resolution under the Randolph-Sheppard Act that the Agency acted in
16 violation of applicable law, this subchapter, the requirements of the BET
17 manual, or any instruction by Agency personnel, or acted unreasonably.
18

19 (e) Informal procedures to review dissatisfactions. At the request of a licensee, the
20 Agency shall arrange for and participate in informal meetings to resolve quickly a
21 matter of dissatisfaction arising from the operation or administration of BET. The
22 informal process is for resolving an issue in controversy quickly and amicably. It is
23 not for the purpose of denying or delaying the manager's right to pursue resolution of
24 a matter through a full evidentiary hearing. At any point during the informal process,
25 either party may elect to terminate the following informal process procedures:
26

27 (1) A licensee may initiate informal procedures by notifying the Agency in writing
28 through the BET director that the licensee is dissatisfied with a matter arising
29 from the operation or administration of BET. The written notice must describe
30 with reasonable particularity the specific matter in controversy, the date the
31 action occurred, or an approximate date if the exact date is not known, and the
32 licensee's desired relief or remedy. If the licensee is dissatisfied with a series of
33 the same or related actions over a period, the notice shall describe, to the best
34 of the licensee's ability, the time frame of the events and include the date of the
35 most recent event about which the licensee is dissatisfied.
36

37 (2) To ensure that informal resolution is possible in a timely manner, the licensee's
38 request to initiate informal proceedings must be filed with the Agency no later
39 than 20 business days after the most recent event specified in the request. the
40 Agency shall within a reasonable time arrange a meeting at a location, date,
41 and time satisfactory to all parties.
42

43 (3) The licensee must notify the Agency when filing a request for informal
44 proceedings if the licensee will be represented by legal counsel during
45 mediation. The Agency will be represented by legal counsel only when the
46 licensee is represented by legal counsel.

1
2 (4) Meetings shall take place in an informal environment and shall be attended by
3 the licensee, a BET staff member, and a neutral third party who shall serve as
4 an informal mediator during the discussions.

5
6 (5) The neutral third party shall be an individual certified in conducting
7 mediations.

8
9 (6) The neutral third party's responsibility is to report to the Agency only that the
10 effort to resolve the matter to the licensee's satisfaction was or was not
11 successful. If an agreement is reached, then the actions agreed to with respect
12 to the facility or licensee shall be immediately taken.

13
14 (7) The provisions concerning mediation under Chapter 850 of this title (relating
15 to Vocational Rehabilitation Services Administrative Rules and Procedures)
16 shall not apply to or control the informal resolution procedures in this
17 subchapter.

18
19 (f) Full evidentiary hearing. A manager has the right to request a full evidentiary hearing
20 to resolve dissatisfaction according to the following:

21
22 (1) A manager has the right to request a full evidentiary hearing without first
23 going through mediated meetings described in subsection (e) of this section.

24
25 (2) A request for an evidentiary hearing must be made no later than the 20th
26 business day after the occurrence of the Agency action about which the
27 manager complains. The VRD director, upon request of the complaining party,
28 may extend the period for filing a grievance upon the showing of good cause
29 by the complaining party for such additional period if such request is made no
30 later than the 20th business day after the occurrence of the Agency action
31 about which the manager complains.

32
33 (3) A manager requesting a full evidentiary hearing after the conduct of mediated
34 meetings described in subsection (e) of this section must request such hearing
35 in writing no later than the 20th business day after receipt of the VRD
36 director's decision.

37
38 (4) A request for a full evidentiary hearing must be in writing and transmitted to
39 the VRD director. A request that is postmarked within the designated time
40 frame shall be considered delivered in a timely manner if properly posted.

41
42 (5) The request for a full evidentiary hearing must describe the specific action with
43 reasonable particularity sufficient to provide notice as to the action that is
44 alleged to be unreasonable or in violation of applicable law, this subchapter,
45 the requirements of the BET manual, or any instruction by Agency personnel.
46 The request must, to the best of the complainant's knowledge, contain the date

1 the action occurred, and the law or regulation must be reasonably identified if
2 an action is alleged to be in violation of law, this subchapter, the requirements
3 of the BET manual, or regulation. The request must also identify the desired
4 relief or remedy.

5
6 (6) The manager may be represented in the evidentiary hearing by legal counsel or
7 other representative of the manager's choice, at the manager's expense.

8
9 (7) The Agency shall arrange reader or other communication services for the
10 manager, if needed, upon request by the manager at least three business days
11 prior to the hearing date.

12
13 (8) The manager shall be notified in writing of the time and place fixed for the
14 hearing and of the manager's right to be represented by legal or other counsel.

15
16 (9) Selection of the hearing officer.

17
18 (A) The hearings coordinator, the Agency's Office of General Counsel, shall
19 select, on a random basis, a hearing officer from a pool of individuals
20 qualified according to this section.

21
22 (B) The hearing officer shall be an impartial and qualified individual who:

23
24 (i) is not involved either with the Agency's action that is at issue or with
25 the administration or operation of BET;

26
27 (ii) is not an employee of a public agency (other than an administrative
28 law judge, hearing examiner, or employee of an institution of higher
29 education);

30
31 (iii) has knowledge of the Randolph-Sheppard Act and any applicable
32 state and federal regulations governing the appeal;

33
34 (iv) has received training specified by the Agency with respect to the
35 performance of official duties; and

36
37 (v) has no personal, professional, or financial interest that would
38 compromise his or her impartiality.

39
40 (C) An individual is not considered to be an employee of a public agency for
41 the purposes of subparagraph (B)(ii) of this paragraph if the only
42 consideration is that the individual is paid by the agency to serve as a
43 hearing officer.

44
45 (10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act,
46 Texas Government Code §2001.051 et seq., and this subchapter to the extent

1 that those procedures do not conflict with the Act and its implementing
2 regulations or this subchapter.

3
4 (11) Licensees bringing complaints shall have the burden of proving their cases by
5 means of a preponderance of the evidence. Licensees shall present their
6 evidence first. When a hearing is requested because of administrative action by
7 the Agency against a licensee, The Agency shall have the burden of proving its
8 case by a preponderance of the evidence and shall present its evidence first.
9

10 (12) Transcription of Proceedings.

11
12 (A) Unless precluded by law, the hearing shall be recorded electronically
13 either by the hearing officer or by someone designated by the hearing
14 officer. Such recording shall be the official record of the testimony
15 recorded during the hearing. Any party, however, may request, at the
16 party's expense, that the hearing be recorded by a court reporter if the
17 request is made within 10 days of the date for the hearing.
18

19 (B) In lieu either of a recording of the testimony electronically or of the
20 reporting of testimony by a court reporter, the parties to a hearing may
21 agree upon a statement of the evidence to use transcription as a statement
22 of the testimonial evidence, or agree to the summarization of testimony
23 before the hearing officer, provided, however, that proceedings or any
24 part of them must be transcribed on written request of any party.
25

26 (C) Unless otherwise provided in this subchapter, the party requesting a
27 transcription of any electronic recording of the proceedings shall bear the
28 cost for transcribing the testimony. Nothing provided for in this section
29 limits the Agency to an electronic record of the proceedings.
30

31 (D) The record of the proceedings, including exhibits and any transcription,
32 shall be made available to the parties by the Agency no later than the
33 30th business day after the close of the hearing.
34

35 (13) The hearing officer shall issue a recommendation that shall set forth the
36 principal issues and relevant facts that were stated at the hearing and the
37 applicable provisions of law, rule, the requirements of the BET manual, or any
38 instruction by Agency personnel. The recommendation shall contain findings
39 of fact and conclusions with respect to each of the issues, and the reasons and
40 bases for the conclusions.
41

42 (14) In formulating a recommendation, the hearing officer shall not evaluate
43 whether the Agency's actions were wise, efficient, or effective. Rather, the
44 hearing officer is limited to determining whether the Agency's actions were
45 unreasonable, or if they violated applicable law, this subchapter, the
46 requirements of the BET manual, or any instruction by Agency personnel.

1
2 (15) If the hearing officer finds that the actions taken by the Agency were
3 unreasonable or violated applicable law, this subchapter, the requirements of
4 the BET manual, or any instruction by Agency personnel, the hearing officer
5 shall also recommend any prospective action necessary to correct the
6 violations.

7
8 (16) The hearing officer's recommendation shall be made no later than the 30th
9 business day after the receipt of the official transcript. The recommendation
10 shall be delivered promptly to the VRD director.

11
12 (17) The VRD director shall review the recommendation of the hearing officer and
13 forward a decision to the manager no later than the 20th business day after
14 receipt of the hearing officer's recommendation. The VRD director's decision
15 shall include findings of fact and conclusions of law based on the evidence in
16 the record and separately stated.

17
18 (18) Subject to the provisions of Texas Government Code §2001.144 and
19 §2001.146, the VRD director's decision shall be the final decision of the
20 Agency. Any such decision becomes the final decision of the Agency if a
21 timely motion for rehearing or reconsideration is not filed.

22
23 (g) Arbitration. A manager appealing the Agency's decision must file a complaint with
24 the US Secretary of Education in conformity with the provisions of the implementing
25 regulations at 34 CFR §395.13 of the Act, pertaining to arbitration of vendor
26 complaints.

27
28 **§854.83. Establishing and Closing Facilities.**

29
30 (a) Establishing facilities. On its own initiative, at the request of an agency that controls
31 federal or state property, of the ECM, or of a private organization, the Agency shall
32 survey the property, blueprints, or other available information concerning the
33 property to determine whether the installation of a BET facility is feasible and
34 consonant with applicable laws and regulations and with VRD objectives.

35
36 (1) If the installation of a BET facility is determined to be feasible, the Agency
37 shall proceed to develop plans for the establishment of a facility in accordance
38 with procedures promulgated and implemented by Agency staff and, when the
39 facility is developed, shall assign a manager to the facility.

40
41 (2) If it is determined that a blind individual could not properly operate a vending
42 facility at a particular location, the pertinent facility data will be presented to
43 the VRD director to determine whether an individual whose disability is not of
44 a visual nature could operate the facility in a proper manner. The phrase "could
45 not properly operate a vending facility" includes the existence, at the time of
46 the establishment of the facility, of laws or regulations that restrict the blind

1 from operating a particular vending facility as defined under state and federal
2 laws.

3
4 (b) Closing facilities. Except for temporary closings by Agency staff, no BET facility
5 shall be closed by the Agency until both of the following have occurred:

6
7 (1) The BET director has certified to the VRD director that the facility is no longer
8 a feasible or viable BET facility and provides reasons for that opinion.

9
10 (2) The VRD director has approved the proposed closing of the facility.
11
12

1
2 **SUBCHAPTER N. Business Enterprises of Texas**
3

4
5 **§854.200. Purpose.**
6

7 ~~The purpose of the Business Enterprises of Texas program is to provide training and~~
8 ~~employment opportunities on state, federal, and private properties throughout Texas for~~
9 ~~Texans who are legally blind.~~

10
11 **§854.201. Legal Authority.**
12

13 ~~(a) Program name. The Department of Assistive and Rehabilitative Services, Division~~
14 ~~for Blind Services (DARS DBS) shall carry out its responsibilities for licensing blind~~
15 ~~persons to operate vending facilities on state, federal, and other property through its state~~
16 ~~program entitled Business Enterprises of Texas, formerly known as Business Enterprises~~
17 ~~Program. Any references still in existence to Business Enterprises Program shall mean~~
18 ~~Business Enterprises of Texas.~~

19
20 ~~(b) Federal authority. DARS DBS operates Business Enterprises of Texas under the~~
21 ~~authority of the Randolph Sheppard Act (20 U.S.C. §107 et seq.) and implementing~~
22 ~~regulations (34 CFR §395.1 et seq.).~~

23
24 ~~(c) State authority. DARS DBS operates Business Enterprises of Texas under the~~
25 ~~authority of Texas Human Resources Code, Title 5, Chapter 94, and is authorized in~~
26 ~~§94.016 to administer Business Enterprises of Texas in accordance with the provisions of~~
27 ~~the Randolph Sheppard Act.~~

28
29 ~~(d) Statutory references. Unless expressly provided otherwise, a reference to any portion~~
30 ~~of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of~~
31 ~~the statute, rule, or regulation.~~

32
33 **§854.202. Definitions.**
34

35 ~~The following words and terms, when used in this subchapter, shall have the following~~
36 ~~meanings, unless the context clearly indicates otherwise. Unless expressly provided~~
37 ~~otherwise, words in the present or past tense include the future tense, and the singular~~
38 ~~includes the plural and the plural includes the singular.~~

39
40 ~~(1) Act. Randolph Sheppard Act (20 U.S.C, Chapter 6A, §107 et seq.).~~

41
42 ~~(2) Application. The "BET Facility Assignment Application" form used by licensees~~
43 ~~to apply for a facility.~~

44
45 ~~(3) Assistant commissioner. Assistant commissioner for the Division for Blind~~
46 ~~Services.~~

1
2 ~~(4) BET Business Enterprises of Texas.~~

3
4 ~~(5) BET assignment The document that sets forth the terms and conditions for~~
5 ~~management of a BET facility by the person named as manager.~~

6
7 ~~(6) BET director The administrator of Business Enterprises of Texas; or, if there be no~~
8 ~~person in that capacity, the person designated by the assistant commissioner for the~~
9 ~~DARS DBS to perform that function; or if there be none, the assistant commissioner.~~

10
11 ~~(7) BET facility Automatic vending machines, cafeterias, snack bars, cart service,~~
12 ~~shelters, counters, and other equipment that may be operated by BET managers and that~~
13 ~~is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods,~~
14 ~~beverages, and other articles or services dispensed automatically or manually and~~
15 ~~prepared on or off the premises in accordance with all applicable health laws, and~~
16 ~~including the vending or exchange of tickets for any lottery authorized by state law.~~

17
18 ~~(8) BET manual "Business Enterprises of Texas Manual of Operations," which~~
19 ~~contains this subchapter adopted by DARS DBS and related instructions and procedures~~
20 ~~by which BET facilities are to be managed.~~

21
22 ~~(9) Blind (person who is) A person whose central visual acuity does not exceed~~
23 ~~20/200 in the better eye with correcting lenses or whose visual acuity, if better than~~
24 ~~20/200, is accompanied by a limit to the field of vision in the better eye to such a degree~~
25 ~~that its widest diameter subtends an angle of no greater than 20 degrees.~~

26
27 ~~(10) Business day A day on which state agencies are officially required to be open~~
28 ~~during their normal business hours.~~

29
30 ~~(11) DARS DBS Department of Assistive and Rehabilitative Services, Division for~~
31 ~~Blind Services.~~

32
33 ~~(12) DARS DBS staff Employees of DARS DBS who have been delegated the~~
34 ~~authority by the assistant commissioner or his or her designee to take an action contained~~
35 ~~in this subchapter.~~

36
37 ~~(13) ECM Elected Committee of Managers.~~

38 ~~(14) Expendables Items that require a low capital outlay and have a short life~~
39 ~~expectancy, such as, by way of illustration and not limitation, small wares, thermometers,~~
40 ~~china, glass, silverware, sugar and napkin dispensers, salt and pepper shakers, serving~~
41 ~~trays, knives, spreaders, serving spoons, and ladles.~~

42
43 ~~(15) Individual with a significant disability A person who has a severe physical or~~
44 ~~mental impairment that seriously limits one or more functional capacities (such as~~
45 ~~mobility or communication).~~

1 ~~(16) Initial assignment—The first BET facility to which a manager is assigned after~~
2 ~~being licensed.~~

3
4 ~~(17) Level 1 facility—A BET facility that in the prior year generated a net income after~~
5 ~~set aside fees equal to or less than 170 percent of the median net income after set aside~~
6 ~~fees of all BET managers for the prior year or, in the case of a new BET facility, is~~
7 ~~reasonably expected to generate that income.~~

8
9 ~~(18) Level 2 facility—A BET facility that in the prior year generated a net income after~~
10 ~~set aside fees greater than 170 percent of the median net income after set aside fees of all~~
11 ~~BET managers for the prior year or, in the case of a new BET facility, is reasonably~~
12 ~~expected to generate that income.~~

13
14 ~~(19) Licensee—A person who has been licensed by DARS DBS as qualified to apply for~~
15 ~~and operate a BET facility, and which shall have the same meaning assigned to "blind~~
16 ~~licensee" in 34 CFR §395.1.~~

17
18 ~~(20) Manager—A licensee who is operating a BET facility, and which shall have the~~
19 ~~same meaning assigned to "vendor" in 34 CFR §395.1.~~

20
21 ~~(21) Net sales—All sales, excluding sales tax.~~

22
23 ~~(22) Other income—Money received by a manager from sources other than direct sales,~~
24 ~~such as vending commissions or subsidies.~~

25
26 ~~(23) Proper and authorized instruction by DARS DBS staff members—Instructions in~~
27 ~~accordance with applicable statutes and program rules, regulations, and procedures.~~

28
29 ~~(24) Sanitation and cleaning supplies—Items that require a low capital outlay and have a~~
30 ~~short life expectancy, such as, by way of illustration and not limitation, mops, brooms,~~
31 ~~detergents, bleach, gloves, oven mitts, trash bags, food wrapping supplies, foil, and~~
32 ~~cleaning supplies for food equipment.~~

33
34 ~~(25) State property—Lands and buildings owned, leased, or otherwise controlled by the~~
35 ~~State of Texas; and equipment and facilities purchased and/or owned by the State of~~
36 ~~Texas.~~

37
38 ~~(26) Vending machine—For the purpose of assigning vending machine income, a coin-~~
39 ~~or currency operated machine that dispenses articles or services, except those machines~~
40 ~~operated by the United States Postal Service for the sale of postage stamps or other postal~~
41 ~~products and services. Machines providing services of a recreational nature and~~
42 ~~telephones shall not be considered to be vending machines.~~

43
44 **~~§854.203. General Policies.~~**

45
46 ~~(a) Objectives. The objectives of Business Enterprises of Texas shall be:~~

1
2 ~~(1) — to provide employment opportunities for qualified individuals; and~~

3
4 ~~(2) — to administer a continuing process of career development for managers that~~
5 ~~encourages them to move into the private sector of business.~~

6
7 ~~(b) Relationship of BET to the Vocational Rehabilitation (VR) Program. The intent of~~
8 ~~Business Enterprises of Texas, as authorized in the Randolph Sheppard Act and the~~
9 ~~Texas Human Resources Code, is to stimulate and enlarge the economic opportunities for~~
10 ~~the citizens of Texas who are blind or visually impaired by establishing a vending facility~~
11 ~~program in which these persons who are in need of employment are given priority in the~~
12 ~~operation of vending facilities selected and installed by DARS DBS. DARS DBS is~~
13 ~~required to administer BET in accordance with the DARS DBS vocational rehabilitation~~
14 ~~objectives. Therefore, a consumer receiving services from the Vocational Rehabilitation~~
15 ~~Program whose employment goal is to be a licensed manager shall have reached an~~
16 ~~employment outcome as that term is used in the Rehabilitation Act of 1973, as amended,~~
17 ~~when the consumer is licensed by DARS DBS and is managing a BET facility. The~~
18 ~~licensed manager shall not be considered an employee of DARS DBS, or of state or~~
19 ~~federal government.~~

20
21 ~~(c) Full-time employment. Managing a BET facility shall constitute full-time~~
22 ~~employment. Full-time shall mean being actively engaged in the management of a BET~~
23 ~~facility for the number of hours necessary to achieve satisfactory operation of the facility.~~
24 ~~The manager shall be available for necessary visits by DARS DBS staff members to~~
25 ~~allow inspection, advice, and consultation as may be required to ensure satisfactory~~
26 ~~operation. Management means the personal supervision of the day-to-day operation of the~~
27 ~~assigned BET facility by the assigned manager.~~

28
29 ~~(d) Subcontracting. The management of a BET facility shall not be subcontracted except~~
30 ~~for temporary periods of time approved by DARS DBS or in those circumstances in~~
31 ~~which DARS DBS considers that subcontracting the operation of some parts of the~~
32 ~~facility is in the best interest of BET. In all events, subcontracting shall require the prior~~
33 ~~written consent of DARS DBS. This subsection shall not affect subcontracts in existence~~
34 ~~on the effective date of this subsection. This subsection does not apply to equipment or~~
35 ~~machines allowed to be placed within the facility and not owned by or arranged for by~~
36 ~~DARS DBS.~~

37
38 ~~(e) Availability of funds. The administration of BET and the implementation of these~~
39 ~~policies are contingent upon the availability of funds for the purposes stated in this~~
40 ~~subchapter.~~

41
42 ~~(f) BET manual. All BET policies adopted by DARS DBS shall be included in the BET~~
43 ~~manual. The BET director shall ensure that each licensee is provided with a copy of the~~
44 ~~manual and any revisions to it. The licensee shall be responsible for reading the manual~~
45 ~~and acknowledging in writing that he or she has read and understands its contents. The~~

1 ~~BET director shall ensure that the BET manual contains procedures from which licensees~~
2 ~~may obtain assistance in understanding BET policies and procedures.~~

3
4 ~~(g) Accessibility of BET materials. All information produced by and provided to~~
5 ~~licensees by DARS DBS shall be in an accessible format. When possible, materials are~~
6 ~~sent in the format requested by the licensee.~~

7
8 ~~(h) Nondiscrimination.~~

9
10 ~~(1) VR and BET participants. DARS DBS shall not discriminate against any blind~~
11 ~~person who is participating in or who may wish to participate in BET on the basis of sex,~~
12 ~~age, religion, color, creed, national origin, political affiliation, or physical or mental~~
13 ~~impairment, if the impairment does not preclude satisfactory performance.~~

14
15 ~~(2) BET facilities. Managers shall operate BET facilities without discriminating~~
16 ~~against any present or prospective supplier, customer, employee, or other individual who~~
17 ~~might come into contact with the facility on the basis of sex, age, religion, color, creed,~~
18 ~~national origin, political affiliation, or physical or mental impairment.~~

19
20 ~~(i) Emergencies. The BET director is authorized to expend funds on an emergency basis~~
21 ~~to protect the state's investment in a BET facility not to exceed \$15,000 in a fiscal year or~~
22 ~~\$2,500 per facility incident.~~

23
24 ~~(j) Temporary management. From time to time it becomes necessary to designate a~~
25 ~~temporary manager to an unassigned facility to ensure uninterrupted service to the host~~
26 ~~and customers. Temporary assignments shall be for the period stated in the assignment~~
27 ~~document. After the time frame stated in the assignment expires, the BET director shall~~
28 ~~review the temporary assignment every 90 days to determine the need for continuation of~~
29 ~~the temporary assignment. The temporary arrangement shall terminate when a new~~
30 ~~manager is assigned to the facility. DARS DBS shall choose temporary managers from~~
31 ~~licensees; if a licensee is not available, DARS DBS may contract with a private entity.~~
32 ~~Before a licensee is offered a temporary opportunity, the regional BET staff and local~~
33 ~~ECM representative shall discuss which licensee in the geographical location has the~~
34 ~~requisite skills to successfully manage the facility temporarily. Preference shall be given~~
35 ~~to lower income managers, in order to temporarily improve their income, when more than~~
36 ~~one person is qualified.~~

37
38 ~~§854.204. BET Administration.~~

39
40 ~~(a) The assistant commissioner is authorized to:~~

41
42 ~~(1) supervise DARS DBS;~~

43
44 ~~(2) establish BET plans, which at a minimum shall provide for all services, assistance,~~
45 ~~training, supervision, and planning necessary for the implementation and administration~~
46 ~~of BET; and~~

1
2 ~~(3) — delegate authority to implement this subchapter to the BET director.~~

3
4 ~~(b) BET director. In addition to the responsibilities delegated to the BET director by the~~
5 ~~assistant commissioner, the BET director shall be responsible for:~~

6
7 ~~(1) — implementing BET personnel policies and development plans; and~~

8
9 ~~(2) — disseminating the information developed by the assistant commissioner related to~~
10 ~~BET plans and policies to all licensees.~~

11
12 ~~(c) Consultants.~~

13
14 ~~(1) — If DARS DBS determines that a consultant is necessary to assist a manager or~~
15 ~~protect the interests of DARS, DARS DBS shall contract with a consultant and may pay~~
16 ~~for the consultant out of the facility revenues. DARS DBS shall not contract with a~~
17 ~~consultant when it possesses the expertise and staffing level to provide the consulting~~
18 ~~services.~~

19
20 ~~(2) — If DARS DBS determines that a consultant is necessary to assist a manager who is~~
21 ~~currently in a facility, the BET director shall consult with the manager before contracting~~
22 ~~with a consultant. The final authority, however, for contracting with a consultant shall~~
23 ~~rest with DARS DBS.~~

24
25 ~~(3) — All consultant contracts entered into by DARS DBS for the provision of support~~
26 ~~and mentoring services to the manager shall not exceed three years in duration, provided,~~
27 ~~however, that the contract may be extended for additional periods not to exceed one year~~
28 ~~each. No contract shall be extended until the manager has been consulted. The final~~
29 ~~discretion to extend the contract shall rest with DARS DBS.~~

30
31 ~~(4) — If DARS DBS determines it necessary to contract with a consultant to protect the~~
32 ~~interests of DARS DBS, DARS DBS shall enter into a separate agreement for that~~
33 ~~purpose with terms and conditions that DARS DBS may consider appropriate.~~

34
35 **~~§854.205. Training of Potential Applicants and Licensees.~~**

36
37 ~~(a) Prerequisites for training. To be eligible for BET training, a consumer desiring a~~
38 ~~career with BET as an employment outcome in the vocational rehabilitation program~~
39 ~~must meet the following criteria~~

40
41 ~~(1) — be at least 18 years of age;~~

42
43 ~~(2) — be a United States citizen residing in Texas (a birth certificate or other applicable~~
44 ~~documentation must be submitted with the application);~~

45
46 ~~(3) — be blind;~~

1
2 ~~(4) — have demonstrated proficiency in math, writing, and reading comprehension;~~

3
4 ~~(5) — have adequate general health and stamina required to perform the basic functions of~~
5 ~~a manager;~~

6
7 ~~(6) — have adequate mobility skills to safely operate a BET facility; and~~

8
9 ~~(7) — not have a history of substance abuse for the previous 12 months.~~

10
11 ~~(b) — Application process. Each eligible consumer interested in applying for BET training~~
12 ~~may submit an application and shall receive an interview and be informed of the results~~
13 ~~of the application.~~

14
15 ~~(c) — Annual continuing education requirements for licensees:~~

16
17 ~~(1) — DARS DBS shall help the ECM conduct an annual training conference for all~~
18 ~~licensees to inform them of new BET developments and to provide instruction on~~
19 ~~relevant topics to enhance licensees' business competence and upward mobility in the~~
20 ~~program. Licensees must attend the DARS DBS Training Conference or a DARS DBS-~~
21 ~~approved alternative training event every year to maintain their license and eligibility to~~
22 ~~bid on available facilities. They must document their attendance at the DARS DBS~~
23 ~~Training Conference by signing attendance records provided at the conference. A~~
24 ~~licensee who is unable to attend the DARS DBS Training Conference may satisfy the~~
25 ~~continuing education requirement by attending an approved course or training~~
26 ~~conference. Such training includes, but is not limited to, either attending the national~~
27 ~~training conferences for blind vendors conducted by the Randolph Sheppard Vendors of~~
28 ~~America or the National Association of Blind Merchants, or successfully completing a~~
29 ~~business-related course from the Hadley School for the blind or a business-related course~~
30 ~~offered by an accredited community college.~~

31
32 ~~(2) — Licensees wishing to attend an alternative training course or conference must~~
33 ~~request preapproval through their local DARS DBS staff. The local DARS DBS staff~~
34 ~~forwards the request to the BET director for preapproval. The licensee must also provide~~
35 ~~proof of successful completion of any business-related course or attendance at a training~~
36 ~~conference through the local DARS DBS staff to the director to receive credit for~~
37 ~~attendance. All costs associated with travel, lodging, meals, and registration when~~
38 ~~attending any training other than the DARS DBS Training Conference will be the sole~~
39 ~~responsibility of the licensee.~~

40
41 ~~(3) — Licensees may use an alternative approved training course or training conference to~~
42 ~~satisfy the continuing education requirement only if they are unable to attend the DARS~~
43 ~~DBS Training Conference because of personal medical reasons, the death of a family~~
44 ~~member, or a medical emergency or condition of an immediate family member, or if~~
45 ~~there is not a DARS DBS Training Conference offered during the licensee's 12-month~~

1 ~~evaluation period. Licensees must provide written documentation of the medical issues or~~
2 ~~death of a family member to their local DARS DBS staff.~~

3
4 ~~(4) Licensees who fail to complete continuing education requirements may be subject~~
5 ~~to administrative action up to and including termination of license.~~

6
7 **~~§854.206. BET Licenses.~~**

8
9 ~~(a) Natural persons. Licenses to manage a BET facility shall be issued only to natural~~
10 ~~persons.~~

11
12 ~~(b) Prerequisites. No person may be licensed until the person has satisfactorily~~
13 ~~completed all required BET training and otherwise continues to satisfy the criteria for~~
14 ~~entry into BET.~~

15
16 ~~(c) Issuance. A license issued by DARS DBS shall contain the name of the licensee, the~~
17 ~~date of issue, and other information that the assistant commissioner considers to be~~
18 ~~appropriate. The license shall be signed by the assistant commissioner on behalf of~~
19 ~~DARS DBS and State of Texas.~~

20
21 ~~(d) Display. The license or a copy of the license shall be displayed prominently in each~~
22 ~~BET facility to which the manager is assigned.~~

23
24 ~~(e) Property right. A license shall not create any property right in the licensee to whom~~
25 ~~it is issued and shall be considered only to inform the public and other interested parties~~
26 ~~that the licensee has successfully completed BET training and is qualified and authorized~~
27 ~~to operate a BET facility.~~

28
29 ~~(f) Transferability. A license is not transferable.~~

30
31 ~~(g) Term. A license issued by DARS DBS shall be valid for an indefinite period,~~
32 ~~subject, however, to termination, revocation, or suspension under conditions specified in~~
33 ~~these policies pertaining to termination of license for reasons other than unsatisfactory~~
34 ~~performance and administrative action based on unsatisfactory performance.~~

35
36 **~~§854.207. Initial and Career Advancement Assignment Procedures.~~**

37
38 ~~(a) Purpose. This section defines the process for the initial and career advancement~~
39 ~~assignments of managers. It is the goal of the process to provide a fair, unbiased, and~~
40 ~~impartial process for selection, transfer, and promotion.~~

41
42 ~~(b) Initial assignment. When a person successfully completes BET training, the BET~~
43 ~~director shall make the initial assignment for the newly licensed person. The initial~~
44 ~~assignment shall be for a minimum of 12 months. The BET director shall make the~~
45 ~~assignment based on the following:~~

1 ~~(1) — availability of a Level 1 facility;~~

2
3 ~~(2) — recommendations from the BET training specialist and the ECM chair;~~

4
5 ~~(3) — licensee's training records;~~

6
7 ~~(4) — licensee's geographical concerns; and~~

8
9 ~~(5) — any other circumstances on a case-by-case basis.~~

10
11 ~~(c) — Career advancement assignments.~~

12
13 ~~(1) — Availability. All career advancement opportunities depend on the availability of~~
14 ~~BET facilities. No facility with a projected annual income equal to the annual median~~
15 ~~income level of all managers or \$30,000, whichever is the greater after set aside fees,~~
16 ~~shall be used for an initial assignment unless it has first been advertised and made~~
17 ~~available to all licensees in the BET Program and no one has been assigned to the facility~~
18 ~~as a result of the advertising process.~~

19
20 ~~(2) — Notice. As BET facilities become available and ready for permanent assignment,~~
21 ~~written notice of the availability shall be given to all licensees within 30 business days.~~

22
23 ~~(3) — On-site visits. An advertised facility shall be available for on-site visits upon~~
24 ~~reasonable notice by applicants.~~

25
26 ~~(4) — Eligibility. To apply for an available facility, a licensee must meet the following~~
27 ~~requirements:~~

28
29 ~~(A) — The licensee must have successfully managed a BET facility for a minimum of one~~
30 ~~year.~~

31
32 ~~(B) — The licensee must have been current on all accounts payable for the preceding 12~~
33 ~~months before the date of the facility announcement. Accounts payable include known~~
34 ~~debts to state and federal entities as well as any BET business related debt. Current~~
35 ~~means performing in accordance with written established or alternate payment plans~~
36 ~~associated with the accounts payable debts.~~

37
38 ~~(C) — The licensee must not be on probation under §106.1929 of this subchapter (relating~~
39 ~~to Administrative Actions Based on Unsatisfactory Performance).~~

40
41 ~~(D) — The licensee must meet eligibility requirements of the facility's host organization.~~

42
43 ~~(E) — The licensee must not have submitted two or more insufficient funds checks to~~
44 ~~DARS DBS within the 12 months before the date of the facility announcement.~~

1 ~~(F) — The licensee must not have submitted two or more late reports within the 12~~
2 ~~months before the date of the facility announcement.~~

3
4 ~~(G) — If unassigned, the licensee must have fulfilled all resignation requirements in the~~
5 ~~licensee's last facility or be displaced and eligible to apply for a facility.~~

6
7 ~~(H) — The manager must have an inventory of merchandise and expendables in the~~
8 ~~manager's current facility as DARS DBS has determined sufficient for its satisfactory~~
9 ~~operation.~~

10
11 ~~(I) — The licensee must satisfy DARS DBS that he or she can acquire the merchandise~~
12 ~~and expendables required for the available facility.~~

13
14 ~~(J) — A licensee who has been placed on probation is not eligible for promotion and~~
15 ~~transfer for 30 days following release from probation.~~

16
17 ~~(K) — A licensee who has been placed on probation twice within a twelve month period is~~
18 ~~not eligible for promotion or transfer for six months following release from probation.~~

19
20 ~~(L) — A licensee who has been placed on probation three times within a two year period~~
21 ~~is not eligible for promotion or transfer for one year following release from probation.~~

22
23 ~~(5) — BET application deadline. A licensee may apply for an available facility by~~
24 ~~submitting an application not later than the 12th business day (exclusive of date of~~
25 ~~mailing) after the date the facility notice was mailed. The submission date shall be:~~

26
27 ~~(A) — the date the application is delivered to DARS DBS; or~~

28
29 ~~(B) — three days after deposit of the application in the United States mail, whichever is~~
30 ~~earlier; or~~

31
32 ~~(C) — the date the application is delivered to an overnight courier.~~

33
34 ~~(6) — BET application contents. A copy of the current form of the application shall be~~
35 ~~included in the BET manual. The substance of the application form shall not be modified~~
36 ~~except by action of DARS DBS. Modifications shall be provided to all licensees before~~
37 ~~their effective date. Upon request by the manager and before the submission deadline,~~
38 ~~assistance is available from the local BET staff and ECM representative in completing~~
39 ~~the BET Application form.~~

40
41 ~~(7) — Preliminary review of applications. The DARS DBS staff and the ECM~~
42 ~~representative in each geographic area in which the applying licensees are currently~~
43 ~~located shall review all applications from their areas and shall verify the applicants'~~
44 ~~eligibility. If an ECM representative is an applicant for an available BET facility, the~~
45 ~~ECM chair shall appoint another ECM member for the review. Completed applications~~

1 shall then be forwarded to the BET director, who shall provide copies to the ECM and
2 DARS DBS staff in the area in which the available facility is located.
3

4 ~~(8) — Level 1 assignments. Assignments to Level 1 facilities shall be made by the BET~~
5 ~~director after reviewing the recommendations and assessments of all applicants~~
6 ~~conducted by the ECM representative and DARS DBS staff for the regions in which the~~
7 ~~available facilities are located. Panel members shall rank all eligible applicants using a~~
8 ~~panel worksheet that weights the applicant's performance by 50 percent for the applicant's~~
9 ~~most recent annual performance evaluation completed before the date of the facility~~
10 ~~advertisement, 25 percent for interview performance, and 25 percent for the submitted~~
11 ~~BET Application form. Any other materials submitted by the applicants must be provided~~
12 ~~by the same deadline as the BET Application form and will be included in the 25 percent~~
13 ~~interview performance weighting component.~~
14

15 ~~(9) — Level 2 assignments. For Level 2 assignments, the following procedures, in~~
16 ~~addition to Level 1 procedures, shall apply:~~
17

18 ~~(A) — Business plan. An applicant must submit a business plan to the BET director no~~
19 ~~later than the 20th business day after the postmark date on the notice of facility~~
20 ~~availability. Upon request by an applicant, the DARS DBS staff in the area in which the~~
21 ~~available facility is located shall provide a standard packet of information to the applicant~~
22 ~~containing information necessary to prepare the business plan. The DARS DBS staff~~
23 ~~shall deliver the packet to the applicant no later than the 3rd business day after receiving~~
24 ~~a request.~~
25

26 ~~(B) — Establishment of a pool of impartial and qualified individuals. DARS DBS shall~~
27 ~~establish and maintain a pool of qualified individuals. The pool members shall be~~
28 ~~individuals who:~~
29

30 ~~(i) — have no personal, professional, or financial interest that would be in conflict with the~~
31 ~~objectivity of the individual;~~
32

33 ~~(ii) — neither have nor have had any association with DARS DBS or Business Enterprises~~
34 ~~of Texas before being considered as a pool member; and~~
35

36 ~~(iii) — have at least 5 years' experience in business at a managerial or executive level,~~
37 ~~including experience in budget preparation and administration, personnel supervision or~~
38 ~~management, and administration of business plans or equivalents to business plans in the~~
39 ~~sector of business in which the person has experience.~~
40

41 ~~(C) — Evaluation of business plans. All business plans shall be reviewed and evaluated by~~
42 ~~an individual chosen at random from the pool of impartial and qualified individuals.~~
43 ~~Business plans shall be evaluated and scored based on a scoring system of 100 points.~~
44 ~~The evaluations and scores shall then be forwarded to the BET director for consideration~~
45 ~~by the selection panel in the selection process.~~
46

1 ~~(D)— Selection panel. A selection panel consisting of one representative from the ECM,~~
2 ~~one DARS DBS staff member, and one individual from the pool of impartial and~~
3 ~~qualified individuals shall be chosen by means of a computer program that selects~~
4 ~~randomly from a database. The selection of each panel member shall be from among all~~
5 ~~persons within their respective categories, except that the impartial member may not be~~
6 ~~the individual who evaluated the business plans. If the member of a category of panel~~
7 ~~members who is selected is unable or refuses to serve, the BET director shall use the~~
8 ~~same method of random selection until three members are chosen.~~

9
10 ~~(E)— Presiding officer. The impartial panel member shall serve as the presiding officer of~~
11 ~~the selection panel.~~

12
13 ~~(F)— Interview notices. Applicants shall be notified by first class U.S. Mail of the date,~~
14 ~~place, and time of the selection panel interview no fewer than 10 business days before the~~
15 ~~convening of the selection panel.~~

16
17 ~~(G)— Selection panel materials. Completed applications, business plans, and each~~
18 ~~applicant's most recent performance evaluation completed before the date of the facility~~
19 ~~advertisement shall be provided to the selection panel members no fewer than 5 business~~
20 ~~days before the date the selection panel is to convene.~~

21
22 ~~(H)— Duties of selection panel. The selection panel shall review the documents provided~~
23 ~~and interview the applicants. The panel shall prepare a tabulation sheet for each applicant~~
24 ~~on which the panel member will enter the business plan score and performance~~
25 ~~evaluation score previously received by the applicant. A third score shall be awarded by~~
26 ~~each panel member for the interview performance of the applicant. Each interview shall~~
27 ~~be rated on a maximum score of 100 based on such areas as the quality of the applicant's~~
28 ~~presentation, knowledge of the submitted business plan, and preparation for the~~
29 ~~assignment. Each applicant shall be interviewed on the same areas and given a similar~~
30 ~~amount of time to present his or her case. While questions must necessarily be tailored to~~
31 ~~each applicant's business plan, presentation, and knowledge, the panel should strive to~~
32 ~~conduct the interviews as similarly as possible. The selection panel shall then rank the top~~
33 ~~three applicants. An applicant's ranking shall be determined after weighting each~~
34 ~~applicant's business plan score by 25 percent, weighting each applicant's most recent~~
35 ~~performance evaluation completed before the date of the facility advertisement by 50~~
36 ~~percent, and weighting the average interview score awarded by panel members by 25~~
37 ~~percent. If there is a tie in scores, the panel will award one point to whichever applicant~~
38 ~~has the greater length of accumulated service as an assigned manager in a BET facility~~
39 ~~according to BET records, thereby breaking the tie. The selections shall be transmitted to~~
40 ~~the BET director, who shall in turn notify the highest ranked applicant of the decision of~~
41 ~~the selection panel. The available facility shall be offered to the applicants in order of~~
42 ~~ranking.~~

43
44 ~~(I)— Reports of improper contact. Members of the selection panel must report alleged~~
45 ~~improper contacts to the BET director or the assistant commissioner. Improper contact is~~
46 ~~defined as communication with a member of the selection panel for the purpose of~~

1 ~~improperly influencing or manipulating the selection of an applicant for the facility being~~
2 ~~considered for assignment by offering a thing or act of value, including promises of~~
3 ~~future benefit, or by threat. Nothing contained in this section, however, shall be~~
4 ~~considered to prohibit any licensee from endorsing or supporting any candidate for~~
5 ~~selection by furnishing a letter or other document to that effect to be included with the~~
6 ~~applying licensee's application. At the conclusion of the selection panel's responsibilities,~~
7 ~~each panel member shall be required to sign a statement certifying whether the member~~
8 ~~had, or had knowledge of, an improper contact during the selection proceedings.~~
9

10 ~~(J) — Process for investigating reports of improper contact. When alleged improper~~
11 ~~contact is reported, each applicant for the facility under consideration and the ECM chair~~
12 ~~shall be informed of the occurrence of an alleged improper contact. The information~~
13 ~~provided to the applicants shall describe the nature of the alleged improper contact but~~
14 ~~shall not divulge the identities of any persons allegedly participating in such improper~~
15 ~~contact. Each applicant may make objection to continuation by the existing panel and~~
16 ~~request that a new panel be formed to select the manager for the available facility. The~~
17 ~~BET director, upon the request of any applicant for the facility, shall determine if the~~
18 ~~improper contact requires that the panel be disbanded and a new panel formed. In making~~
19 ~~that decision, the BET director shall consider all relevant factors, including the~~
20 ~~objections, if any, of the applicants, to determine if the improper contact is likely to~~
21 ~~influence the decision of the selection panel. If the BET director determines that the~~
22 ~~improper contact is likely to influence the selection process, the BET director shall direct~~
23 ~~that the panel be disbanded and that a new panel be formed to consider the selection for~~
24 ~~the available facility. The BET director shall inform all applicants of the decision to~~
25 ~~continue the selection process with the existing panel or to form a new panel and shall~~
26 ~~state the basis of the decision. The actions prescribed as a consequence of improper~~
27 ~~contact set forth in rules pertaining to administrative actions shall apply whether or not~~
28 ~~any improper contact results in the panel being disbanded.~~
29

30 ~~(K) — Exceptions to assignment and selection procedures. Unusual circumstances may~~
31 ~~require exceptions to assignment and selection procedures. Exceptions to these~~
32 ~~procedures shall be made only if the circumstance is not covered by assignment~~
33 ~~procedures and failure to react to the circumstance would be detrimental to BET or a~~
34 ~~licensee. Notwithstanding anything in this section, no exceptional procedure shall result~~
35 ~~in the removal of a manager from a facility except for reasons contained in rules~~
36 ~~pertaining to administrative actions. Assignment and selection decisions that are~~
37 ~~exceptions to these procedures shall be made by the BET director after discussing~~
38 ~~relevant information with the ECM chair and receiving the chair's recommendation.~~
39 ~~Should a decision contrary to the ECM chair's recommendation be made, the BET~~
40 ~~director shall provide a written explanation of the decision to the ECM chair.~~
41

42 **~~§854.208. Fixtures, Furnishings, and Equipment; Initial Inventory; and~~**
43 **~~Expendables.~~**
44

45 ~~(a) — Survey. When a BET facility becomes available for assignment, the DARS DBS~~
46 ~~staff shall conduct a survey of the site to determine the fixtures, furnishings, and~~

1 ~~equipment required to allow the facility to operate in accordance with projections by the~~
2 ~~DARS DBS staff of the potential for the facility. When the facility is an existing one, the~~
3 ~~survey shall consider the need for replacement or repair of fixtures, furnishings, and~~
4 ~~equipment.~~

5
6 ~~(b) Facility plan. The DARS DBS staff shall prepare a detailed schedule of the~~
7 ~~requirements for fixtures, furnishings, and equipment for the facility, including~~
8 ~~specifications for each item required and a site plan of the facility depicting the~~
9 ~~placement of the fixtures, furnishings, and equipment within the facility.~~

10
11 ~~(c) Acquisition, placement, and installation. When satisfied with the fixtures,~~
12 ~~furnishings, and equipment required for the facility, the DARS DBS staff shall cause the~~
13 ~~necessary fixtures, furnishings, and equipment to be purchased or otherwise acquired and~~
14 ~~placed or installed in the facility in accordance with the approved plans. Necessary~~
15 ~~fixtures, furnishings, and equipment may be placed away from the facility only in the~~
16 ~~case of off-site storage and with the prior approval of DARS DBS. A manager's~~
17 ~~responsibilities as noted in rule apply to off-site equipment.~~

18
19 ~~(d) Ownership.~~

20
21 ~~(1) All state fixtures, furnishings, and equipment within the facility shall at all times~~
22 ~~remain the property of the State of Texas. Their use by the facility manager shall be as a~~
23 ~~licensee only.~~

24
25 ~~(2) DARS DBS shall have the sole authority to direct, control, transfer, and dispose of~~
26 ~~the fixtures, furnishings, and equipment as it determines to be appropriate and necessary.~~

27
28 ~~(e) Modifications. No modifications or alterations shall be made to state-owned fixtures,~~
29 ~~furnishings, and equipment by any person, firm, or entity without the express prior~~
30 ~~written approval of DARS DBS, which shall be granted or not granted solely at the~~
31 ~~discretion of DARS DBS.~~

32
33 ~~(f) Upkeep and maintenance.~~

34
35 ~~(1) The manager assigned to a facility shall be provided with manuals, instructions,~~
36 ~~and guides in an accessible format for state-owned fixtures, furnishings, and equipment~~
37 ~~within the facility. The manager is responsible for ensuring that all provided manuals,~~
38 ~~instructions, and other related material are available in the facility when the manager~~
39 ~~leaves.~~

40
41 ~~(2) It shall be the responsibility of the manager to keep DARS DBS fixtures,~~
42 ~~furnishings, and equipment in a clean and sanitary condition and to perform maintenance~~
43 ~~required or recommended by the manufacturers or vendors of the fixtures, furnishings,~~
44 ~~and equipment.~~

1 ~~(3) — The manager shall keep and maintain accurate records of all maintenance~~
2 ~~performed on DARS DBS fixtures, furnishings, and equipment. Any failure or refusal of~~
3 ~~the manager to perform the maintenance referred to in this section shall result in the~~
4 ~~manager being required to reimburse DARS DBS for any cost or expense resulting from~~
5 ~~the failure or refusal.~~

6
7 ~~(g) — Repairs and replacements.~~

8
9 ~~(1) — DARS DBS shall be responsible for all necessary repairs of any of the state-owned~~
10 ~~fixtures, furnishings, and equipment located within the facility except for repairs~~
11 ~~necessitated by the negligence, abuse, or misuse of the fixtures, furnishings, or equipment~~
12 ~~by the manager or the manager's employees. The cost of repairs necessitated by~~
13 ~~negligence, abuse, or misuse by the manager or the manager's employees shall be the sole~~
14 ~~responsibility of the manager. Failure to make such repairs shall result in administrative~~
15 ~~action under this subchapter.~~

16
17 ~~(2) — The BET director shall establish and implement procedures for facilitating the~~
18 ~~timely necessary repairs and for the payment for such services. There shall be included in~~
19 ~~these procedures specific procedures for initiating repairs by the manager and a list of~~
20 ~~approved vendors for repairs, which shall be provided to each manager as published and~~
21 ~~as revised from time to time.~~

22
23 ~~(3) — Under no circumstances is a manager authorized to have the cost of repairs charged~~
24 ~~to DARS DBS or to have repairs made by anyone other than approved vendors unless~~
25 ~~specific authority to do so has been given to the manager in writing by the DARS DBS~~
26 ~~staff. Each vendor included in the approved list of vendors for repairs shall be informed~~
27 ~~by DARS DBS staff of this prohibition and of the procedures for authorized repairs and~~
28 ~~for payment for services.~~

29
30 ~~(4) — DARS DBS staff members on their own initiative or upon request by a manager~~
31 ~~shall determine the need for replacement of any fixtures, furnishings, or equipment. If~~
32 ~~they determine the need, they shall report it to the BET director. If authorized by the BET~~
33 ~~director, replacement fixtures, furnishings, or equipment shall be acquired from available~~
34 ~~BET funds.~~

35
36 ~~(5) — Fixtures, furnishings, and equipment shall not include sanitation and cleaning~~
37 ~~supplies. Each manager of a facility shall be responsible for replacing all such items with~~
38 ~~items of comparable quality as those being replaced and originally furnished by DARS~~
39 ~~DBS.~~

40
41 ~~(h) — Initial inventory of merchandise and expendables for newly licensed managers.~~
42 ~~DARS DBS shall furnish without charge the initial inventory of merchandise and~~
43 ~~expendables for the initial assignment of a newly licensed licensee. The initial inventory~~
44 ~~of merchandise and expendables shall be sufficient to assist the manager with starting the~~
45 ~~business.~~

1 ~~(i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and~~
2 ~~expendables.~~

3
4 ~~(1) The manager shall maintain an inventory of merchandise, sanitation and cleaning~~
5 ~~supplies and expendables in the same quantities as were transferred to the manager upon~~
6 ~~assignment to the facility. If DARS DBS determines that changed circumstances require~~
7 ~~different quantities of merchandise, sanitation and cleaning supplies, and expendables,~~
8 ~~DARS DBS shall communicate in writing to the manager the new quantities required. If~~
9 ~~the new quantities of merchandise, sanitation and cleaning supplies and expendables are~~
10 ~~necessary to provide for the satisfactory operation of the facility, those new quantities of~~
11 ~~inventory must be maintained by the manager.~~

12
13 ~~(2) Managers assigned to any facility other than their initial assignment in Texas shall~~
14 ~~acquire the merchandise, sanitation and cleaning supplies, and expendables as determined~~
15 ~~by DARS DBS to be sufficient to satisfactorily operate the facility. To effectively~~
16 ~~expedite the changeover in facilities, when a facility is already stocked with merchandise,~~
17 ~~sanitation and cleaning supplies, and expendables, the existing stock shall become part of~~
18 ~~the required inventory stock level of the incoming manager. The amount owed by the~~
19 ~~incoming manager for the existing stock shall be the amount agreed to by the affected~~
20 ~~parties. If the existing inventory is the property of the state, the amount owed by the~~
21 ~~incoming manager shall be the amount paid with state funds.~~

22
23 ~~(j) Purchases on credit. During the first three years of being an active manager in the~~
24 ~~program, managers must notify DARS DBS in advance of any purchase of merchandise,~~
25 ~~sanitation and cleaning supplies and expendables on credit.~~

26
27 ~~(k) Obtaining an advance from DARS DBS for initial inventory. A manager may apply~~
28 ~~to DARS DBS for an advance to purchase an initial inventory of merchandise, sanitation~~
29 ~~and cleaning supplies, and expendables. The manager must satisfy any advance received~~
30 ~~from DARS DBS to purchase merchandise on subsequent assignments within a 12-month~~
31 ~~period and make monthly payments in the amount established by DARS DBS. The~~
32 ~~granting of an advance is discretionary and may be done only under the following~~
33 ~~conditions:~~

34
35 ~~(1) The manager must satisfy DARS DBS in writing about why the advance is needed~~
36 ~~and why the funds are not available from other sources.~~

37
38 ~~(2) The manager must submit evidence satisfactory to DARS DBS that the financing~~
39 ~~has been sought from at least two commercial financial institutions, such as, by way of~~
40 ~~example, the Small Business Administration, banks, savings and loans, credit unions, or~~
41 ~~like institutions.~~

42
43 ~~(3) The manager shall satisfy DARS DBS about the manager's ability to repay the~~
44 ~~advance within 12 months.~~

1 ~~(4) — Managers with outstanding balances on advances are not eligible for transfer to~~
2 ~~another assignment.~~

3
4 ~~(1) — Transfer of fixtures, furnishings, equipment, and inventory of merchandise, sanitation~~
5 ~~and cleaning supplies, and expendable items. When a manager is assigned to an existing~~
6 ~~BET facility, the responsibility for the fixtures, furnishings, and equipment of that~~
7 ~~facility, as well as its inventory of merchandise, sanitation and cleaning supplies, and~~
8 ~~expendable items shall be transferred to the incoming manager. The BET director shall~~
9 ~~develop and implement procedures for affecting such transfers to ensure that both the~~
10 ~~incoming and outgoing managers have full knowledge of the nature and condition of the~~
11 ~~items being transferred.~~

12
13 ~~§854.209. Set Aside Fees.~~

14
15 ~~(a) — Purpose. The DARS DBS requires managers to pay a set aside fee based on the~~
16 ~~monthly net proceeds of their BET facilities. The purposes of requiring this payment are:~~

17
18 ~~(1) — to promote to the greatest possible extent the concept of a manager being an~~
19 ~~independent business person;~~

20
21 ~~(2) — to cause BET to be to the greatest extent possible, with due regard to other~~
22 ~~considerations, self-supporting;~~

23
24 ~~(3) — to encourage and stimulate growth in BET; and~~

25
26 ~~(4) — to provide incentives for the increased employment opportunities for blind Texans.~~

27
28 ~~(b) — Use of funds. To the extent permitted or required by applicable laws, rules, and~~
29 ~~regulations, the funds collected as set aside fees shall be used by DARS DBS for the~~
30 ~~following purposes:~~

31
32 ~~(1) — maintenance and replacement of equipment for use in BET;~~

33
34 ~~(2) — purchase of new equipment for use in BET;~~

35
36 ~~(3) — management services;~~

37
38 ~~(4) — ensuring a fair minimum return to managers; and~~

39
40 ~~(5) — the establishment and maintenance of retirement or pension funds, health insurance~~
41 ~~contributions, and provision for paid sick leave and vacation time if it is so determined by~~
42 ~~a majority vote of managers assigned to a facility, after DARS DBS provides to each~~
43 ~~such manager information on all matters relevant to these proposed purposes.~~

44
45 ~~(c) — Method of computing net proceeds.~~

1 ~~(1) Net proceeds is the amount remaining from the sale of merchandise of a BET~~
2 ~~facility, all vending machine income, and other income accruing to the manager from the~~
3 ~~facility after deducting the reasonable and necessary cost of such sale, but excluding set-~~
4 ~~aside charges required to be paid by the manager. Net sales are all sales, excluding sales~~
5 ~~tax. The manager may not remove any items from the inventory or other stock items of~~
6 ~~the facility unless the manager pays for those items at the actual cost basis.~~

7
8 ~~(2) Costs of sales that may be deducted from net sales to calculate net proceeds in a~~
9 ~~reporting period shall be limited to:~~

10
11 ~~(A) cost of merchandise sold;~~

12
13 ~~(B) wages paid to employees;~~

14
15 ~~(C) payroll taxes; and~~

16
17 ~~(D) the following reasonable miscellaneous operating expenses that are directly related~~
18 ~~to the operation of the BET facility:~~

19
20 ~~(i) discretionary expenses, not to exceed 1.5 percent of the monthly net sales, or \$150,~~
21 ~~whichever is greater;~~

22
23 ~~(ii) rent and utilities authorized in the permit or contract;~~

24
25 ~~(iii) business taxes, licenses, and permits;~~

26
27 ~~(iv) telecommunication services;~~

28
29 ~~(v) liability, property damage, and fire insurance;~~

30
31 ~~(vi) worker's compensation insurance;~~

32
33 ~~(vii) employee group hospitalization or health insurance;~~

34
35 ~~(viii) employee retirement contributions (the plans must be IRS approved and not for the~~
36 ~~manager);~~

37
38 ~~(ix) janitorial services, supplies, and equipment;~~

39
40 ~~(x) bookkeeping and accounting services;~~

41
42 ~~(xi) trash removal and disposal services;~~

43
44 ~~(xii) service contracts on file with DARS DBS;~~
45

1 ~~(xiii) legal fees directly related to the operation of the facility (legal fees directly or~~
2 ~~indirectly related to actions against governmental entities are not deductible);~~

3
4 ~~(xiv) medical expenses directly related to accidents that occur to employees at the~~
5 ~~facility, not to exceed \$500;~~

6
7 ~~(xv) purchase of personally owned or leased equipment that has been approved by DARS~~
8 ~~DBS for placement in the facility;~~

9
10 ~~(xvi) repairs and maintenance to personally owned or leased equipment that has been~~
11 ~~approved by DARS DBS to be placed in the facility;~~

12
13 ~~(xvii) consumable office supplies;~~

14
15 ~~(xviii) exterminator or pest control services; and~~

16
17 ~~(xix) mileage expenses for vehicles required for the direct operation of vending facilities~~
18 ~~at the rate and method allowed by the Internal Revenue Service at the time the expenses~~
19 ~~are incurred.~~

20
21 ~~(3) All reports by managers shall be accompanied by any supporting documents~~
22 ~~required by DARS DBS.~~

23
24 ~~(d) Method of computing monthly set aside fee. The monthly set aside fee of each~~
25 ~~manager shall be a percentage of the net proceeds of the facility as determined in~~
26 ~~accordance with this section. The provisions relative to the percentage required to be paid~~
27 ~~as set aside fees shall be reviewed by the DARS DBS with the active participation of the~~
28 ~~ECM at least annually each state fiscal year. The purpose of the review shall be to~~
29 ~~determine whether the percentage needs to be adjusted in order to meet the needs of the~~
30 ~~program. The percentage assessed against the net proceeds of facilities may be lowered or~~
31 ~~raised to meet the needs of the program while maintaining, to within 30 percent the level~~
32 ~~of cash reserves available at the time of enactment of this subchapter. The ECM shall be~~
33 ~~provided with all relevant financial and other information concerning the financial~~
34 ~~requirements of the program no fewer than 60 days before any review by DARS DBS in~~
35 ~~which the percentage is to be considered. For the period from the effective date of this~~
36 ~~amended rule until DARS DBS undertakes its first annual review of the set aside fee, the~~
37 ~~percentage shall be five percent.~~

38
39 ~~(e) Payment of set aside fee. The set aside fee shall be submitted with the manager's~~
40 ~~monthly statement of facility operations. The manager shall use "BET Monthly Facility~~
41 ~~Report, BE 117," to report monthly activities. The BET director shall develop and~~
42 ~~implement procedures for the preparation and submittal of monthly statements.~~

43
44 ~~(f) Adjustments to monthly set aside fee.~~

1 ~~(1) — To encourage managers to hire individuals with significant disabilities, managers~~
2 ~~shall deduct from their set aside payment up to 50 percent of the wages or salary paid to a~~
3 ~~blind or otherwise significantly disabled employee as defined by the Americans with~~
4 ~~Disabilities Act during any month up to an amount not to exceed 5 percent of the set~~
5 ~~aside payment amount for that month or \$250, whichever is less. A manager may make~~
6 ~~this deduction for any number of employees who are blind or otherwise significantly~~
7 ~~disabled so long as that deduction from the set aside payment amount does not exceed 25~~
8 ~~percent of the total set aside payment due, or \$1,250, whichever is less. The manager~~
9 ~~shall provide documentation to DARS DBS as required by DARS DBS to verify such~~
10 ~~employment and the right to the reduction in set aside fees. For the purposes of this~~
11 ~~paragraph, the term "blind or otherwise significantly disabled employee" does not~~
12 ~~include:~~

13
14 ~~(A) — the manager;~~

15
16 ~~(B) — a blind or otherwise significantly disabled person within the first degree of~~
17 ~~consanguinity or affinity to the manager; or~~

18
19 ~~(C) — a blind or otherwise significantly disabled person claimed as a dependent, either in~~
20 ~~whole or in part, on the manager's United States income tax return.~~

21
22
23 ~~(2) — Any adjustments provided for in paragraph (1) of this subsection shall not apply for~~
24 ~~any month in which the set aside fee is not paid in a timely manner.~~

25
26 ~~(3) — To encourage managers to promptly file their monthly statement of facility~~
27 ~~operations and pay their monthly set aside fee, managers shall have their monthly set~~
28 ~~aside fee increased by 5 percent of the total amount due if either their monthly statement~~
29 ~~or the monthly set aside fee is not timely received by DARS DBS in accordance with~~
30 ~~BET procedures for their preparation and submittal. None of the terms of this rule shall~~
31 ~~ever be construed to create a contract to pay, as consideration for the use, forbearance, or~~
32 ~~detention of money, interest at a rate in excess of the maximum rate permitted by~~
33 ~~applicable laws. This adjustment to the set aside fee is not imposed as interest, but if for~~
34 ~~any reason whatever this adjustment is considered to be interest, DARS DBS shall refund~~
35 ~~to the manager any and all amounts as shall be necessary to cause the "interest" paid to~~
36 ~~produce a rate equal to the maximum rate permitted by applicable laws.~~

37
38 ~~**§854.210. Duties and Responsibilities of Managers.**~~

39
40 ~~(a) — Managers must comply with applicable law, this subchapter, written agreements~~
41 ~~with hosts, the BET Assignment, the requirements of the BET manual, and any proper~~
42 ~~and authorized instruction by the DARS DBS staff.~~

43
44 ~~(b) — Managers must comply with procedures prescribed by the Comptroller of Public~~
45 ~~Accounts for the payment of sales taxes and provide evidence to DARS DBS of timely~~
46 ~~sales tax remittances.~~

1
2 ~~(c) Managers must not engage in conduct that demonstrably jeopardizes the DARS/DBS~~
3 ~~right, title, and interest in the BET facility, its equipment, or the lease or agreement with~~
4 ~~the property managers.~~

5
6 ~~(d) Managers must maintain a professional appearance and act in a professional manner~~
7 ~~while managing a BET facility.~~

8
9 ~~(e) Managers must open a commercial business account in which they maintain~~
10 ~~sufficient funds to operate the BET facility.~~

11
12 ~~(f) Managers must make payments for insurance provided by DARS DBS. The host~~
13 ~~shall be added as an insured when required.~~

14
15 ~~(g) Managers must hire sufficient employees to ensure the efficient operation of the~~
16 ~~BET facility and to provide adequate service to customers. Should the facility be~~
17 ~~remodeled or operational areas changed, the manager must have sufficient employees on~~
18 ~~hand for the necessary shutdown and reopen cleanup.~~

19
20 ~~(h) Managers must be actively engaged in the management of a BET facility the number~~
21 ~~of hours necessary to achieve satisfactory operation of the facility. With prior notice from~~
22 ~~DARS DBS, managers shall be available for all necessary visits to the facilities for the~~
23 ~~purpose of advice, consultation, and inspections. Should the business be closed for~~
24 ~~remodel or improvement, the manager must be available for the opening, closing, and~~
25 ~~overall security of the business and assets.~~

26
27 ~~(i) Managers must take appropriate actions to correct deficiencies noted on BET facility~~
28 ~~audits or reviews within seven business days.~~

29
30 ~~(j) Managers must provide satisfactory service to the BET facility host and customers.~~

31
32 ~~(k) Managers shall notify DARS DBS in advance if they intend to be absent from their~~
33 ~~assigned facility for more than two days.~~

34
35 ~~(l) Managers must provide DARS DBS with the following information and must notify~~
36 ~~DARS DBS of any changes to any item no later than 10 business days after a change~~
37 ~~occurs:~~

38
39 ~~(1) the BET facility telephone number;~~

40
41 ~~(2) an address to which BET correspondence is to be sent;~~

42
43 ~~(3) a phone number for use in emergencies; and~~

44
45 ~~(4) the manager's preferred reading format.~~
46

1 ~~(m) Managers are accountable to DARS DBS for the proceeds of the business.~~

2
3 ~~(n) Managers must keep all records supporting the monthly facility report for three~~
4 ~~calendar years.~~

5
6 ~~(o) Managers shall report the actual value of resale inventory by taking a physical count~~
7 ~~in the facility each month and submitting a written inventory quarterly (March, June,~~
8 ~~September, and December) with the monthly facility report.~~

9
10 ~~(p) Managers, upon request by DARS DBS, must make available all records pertinent to~~
11 ~~the facilities to which they have been assigned for the purpose of audit or review.~~

12
13 ~~**§854.211. Responsibilities of the Department of Assistive and Rehabilitative**~~
14 ~~**Services, Division for Blind Services.**~~

15
16 ~~(a) Management services. DARS DBS shall provide each manager with regular and~~
17 ~~systematic management services, which shall, at a minimum, includes~~

18
19 ~~(1) explanations of DARS DBS rules, procedures, policies, and standards;~~

20
21 ~~(2) recommendations on ways in which the facility may be made more profitable for~~
22 ~~the manager;~~

23
24 ~~(3) techniques to develop positive relationships with customers, assistants, and~~
25 ~~management of the host organization;~~

26
27 ~~(4) possible solutions to problems recognized by the manager or brought to the~~
28 ~~manager's attention by the DARS DBS staff or the facility host;~~

29
30 ~~(5) continuing education and training courses and opportunities for managers designed~~
31 ~~to enhance skills, productivity, and profitability; and~~

32
33 ~~(6) information about laws, rules, and regulations affecting the operation of a BET~~
34 ~~facility.~~

35
36 ~~(b) Training. DARS DBS shall assist the ECM to conduct a special training seminar~~
37 ~~each year for all licensees to inform them of new BET developments and to provide~~
38 ~~instruction on new, relevant topics to enhance upward mobility.~~

39
40 ~~(c) Facility operating conditions. DARS DBS shall establish the conditions for operation~~
41 ~~of a BET facility in accordance with this subchapter and any requirements of the host.~~
42 ~~The operating conditions shall include, among other things, pricing requirements, hours~~
43 ~~of operation, and menu items or product lines. DARS DBS may revise the operating~~
44 ~~conditions from time to time as market conditions warrant. The final authority and~~
45 ~~ultimate responsibility for determining the prices to be charged for products sold through~~
46 ~~BET facilities shall rest with DARS DBS.~~

1
2 ~~(d) BET financial data. Upon request, DARS DBS shall provide licensees with access to~~
3 ~~BET financial data. Also upon request, the DARS DBS staff shall provide assistance to~~
4 ~~the licensee in interpreting the data.~~

5
6 ~~(e) Inventory payment. When a manager leaves the manager's initial assignment, DARS~~
7 ~~DBS shall pay the manager or the manager's heirs the value of the usable stock and~~
8 ~~supplies above the amount provided to the manager upon initial assignment.~~

9
10 **~~§854.212. BET Elected Committee of Managers.~~**

11
12 ~~(a) Authority. The Elected Committee of Managers (ECM) is created and shall operate~~
13 ~~under Section 107b-1 of the Act.~~

14
15 ~~(b) Relationship to DARS DBS. The ECM shall be presumed as the sole representative~~
16 ~~of all licensees to DARS DBS in matters contained in the Act and implementing~~
17 ~~regulations requiring the active participation of the ECM. Active participation means an~~
18 ~~ongoing process of good faith negotiations between the Elected Committee of Managers~~
19 ~~and DARS DBS in the development of BET policies and procedures before~~
20 ~~implementation. DARS DBS shall have the ultimate responsibility for the administration~~
21 ~~and operation of all aspects of BET and has final authority in decisions affecting BET.~~

22
23 ~~(c) Relationship to licensees.~~

24
25 ~~(1) It shall be the sole responsibility of the licensees who elect the members of ECM to~~
26 ~~ensure that the persons elected represent all licensees.~~

27
28 ~~(2) The ECM shall, in addition to all other matters set forth in this subchapter or by law~~
29 ~~or regulation affecting the administration of BET, act as advocates for licensees and shall~~
30 ~~strive to improve, expand, and make profitable and successful BET to the greatest~~
31 ~~possible extent for the mutual benefit of DARS DBS and of the consumers who~~
32 ~~participate in the program.~~

33
34 ~~(d) BET policies, rules, and procedures. In all matters related to policies and rules,~~
35 ~~DARS DBS has the ultimate responsibility and the ultimate authority for their~~
36 ~~establishment and adoption. The ECM shall actively participate in the consideration of~~
37 ~~significant BET decisions and in deliberations of rules and policies affecting BET.~~
38 ~~Whenever DARS DBS or the ECM wishes to consider policies or rules related to BET,~~
39 ~~DARS DBS shall request that the ECM participate in DARS DBS rule drafting~~
40 ~~workshops to be conducted by the BET director. The BET director will work with the~~
41 ~~ECM in a good faith effort to come to agreement in matters related to rule and policy~~
42 ~~changes.~~

43
44 ~~(e) BET administrative decisions. In matters concerning the administration of BET, the~~
45 ~~ultimate responsibility and authority for making administrative decisions affecting BET is~~
46 ~~that of DARS DBS. The BET director shall establish and maintain a continuing dialogue~~

1 ~~and exchange of information with the ECM about decisions regarding the administration~~
2 ~~of BET and shall seek ECM input and advice on all decisions affecting the administration~~
3 ~~of the program. In cooperation with the ECM chair and other members of the ECM that~~
4 ~~the ECM chair considers necessary and appropriate, the BET director shall develop and~~
5 ~~implement methods of establishing and maintaining the dialogue and exchange of~~
6 ~~information. The methods developed shall be set out in detail in a written format and~~
7 ~~shall be included in the BET manual.~~

8
9 ~~(f) Exclusions from participation. Neither the ECM, nor any of its members, nor any~~
10 ~~manager is an employee, officer, or official of the State of Texas. Therefore, the ECM~~
11 ~~shall not participate in any decision making process regarding personnel of DARS DBS,~~
12 ~~personnel policies, or personnel administration.~~

13
14 ~~(g) Structure. The ECM shall, to the extent possible, be composed of licensees who are~~
15 ~~representative of all licensees in BET based on such factors as geography and facility~~
16 ~~type and size. Two representatives shall be elected from each designated ECM district~~
17 ~~created by DARS DBS with the active participation of the ECM and as may be revised or~~
18 ~~modified.~~

19
20 ~~(h) Qualifications. The ECM shall establish qualifications for candidates, and the~~
21 ~~procedures for voting, tabulating, and announcing results. DARS DBS shall provide such~~
22 ~~advice and counsel as may be requested by the ECM to accomplish all elections of~~
23 ~~representatives to the ECM.~~

24
25 ~~(i) Term of office. The term of office for ECM members shall be two years beginning~~
26 ~~on January 1 following the election. Even and odd numbered districts shall alternate~~
27 ~~election years. Any ECM member elected to fill a vacancy shall serve the remainder of~~
28 ~~the unexpired term of the manager who vacated a position.~~

29
30 ~~(j) Meetings. The ECM shall meet once during each calendar year to elect officers and~~
31 ~~again as it may establish by bylaw. The ECM chair shall provide the BET director with a~~
32 ~~written meeting agenda ten business days before each meeting.~~

33
34 ~~(k) Internal procedures of the ECM. The ECM shall establish bylaws to govern its~~
35 ~~internal operation and order of business and shall provide DARS DBS with a copy.~~

36
37 ~~(l) Travel expenses.~~

38
39 ~~(1) Expenses for travel, meals, lodging, or other related expenses incurred by ECM~~
40 ~~representatives must be preapproved by DARS DBS.~~

41
42 ~~(2) When representing a manager at a full evidentiary hearing, the ECM representative~~
43 ~~shall be reimbursed for travel, meals, and lodging at the rate allowed for travel by DARS~~
44 ~~DBS staff members.~~

1 ~~§854.213. Termination of License for Reasons Other Than Unsatisfactory~~
2 ~~Performance.~~

3
4 ~~(a) Causes for termination. The license of a licensee shall be terminated upon the~~
5 ~~occurrence of any one of the following:~~

6
7 ~~(1) The licensee's visual acuity is improved by any means to the point at which the~~
8 ~~licensee no longer satisfies the definition of blind.~~

9
10 ~~(2) The licensee becomes otherwise permanently disabled and as a result of such~~
11 ~~permanent disability is unable to perform the essential functions of operating and~~
12 ~~maintaining a BET facility. Permanently disabled is a condition that is medically~~
13 ~~documented and has existed or is expected to exist for at least twelve months. The~~
14 ~~determination of permanently disabled shall be made by the assistant commissioner or~~
15 ~~designee after review of medical documentation and other information relevant to the~~
16 ~~issue. Other information relevant to the issue shall include recommendations from the~~
17 ~~DARS DBS staff and the ECM, pertinent information from the licensee's BET file or~~
18 ~~provided by the licensee, and reports of examinations or evaluations, if any, obtained by~~
19 ~~DARS DBS and the licensee.~~

20
21 ~~(3) The licensee is unassigned and has not accepted assignment offers or applied for an~~
22 ~~assignment when facilities are available for a period of six consecutive months. The six-~~
23 ~~month deadline may be extended by periods of 30 days when facilities are not available~~
24 ~~for assignment. Any unassigned period of 12 months or more requires retraining for the~~
25 ~~licensee to become eligible to bid for, or be assigned to, available facilities.~~

26
27 ~~(b) Examination and evaluation. In any situation in which the vision or other disability~~
28 ~~of a licensee is at issue with respect to termination of a license, DARS DBS or the~~
29 ~~licensee may require an examination or evaluation by professionals to determine whether~~
30 ~~the licensee is otherwise permanently disabled and as a result of such permanent~~
31 ~~disability is unable to perform the essential functions of operating and maintaining a BET~~
32 ~~facility. The reports of such professionals shall be furnished to DARS DBS and the~~
33 ~~licensee. Any failure of the licensee to participate in required examinations or evaluations~~
34 ~~shall be grounds for administrative action.~~

35
36 ~~(c) Restoration of license. A license terminated under the provisions of this section may~~
37 ~~be restored at the discretion of DARS DBS if the condition or conditions causing the~~
38 ~~termination have been satisfactorily resolved. In considering a decision whether to restore~~
39 ~~a license terminated according to this section, the assistant commissioner shall consult~~
40 ~~with appropriate BET staff members, the ECM chair, and any advocate for the licensee~~
41 ~~and shall consider all pertinent information and documentation provided by any of the~~
42 ~~persons described in this subsection.~~

43
44 ~~(d) Conditional restoration. If the assistant commissioner determines that a license~~
45 ~~terminated according to this section should be restored, the assistant commissioner may~~
46 ~~condition the restoration of the license on any reasonable matters, such as, by way of~~

1 ~~illustration, continued medical treatment or therapy, or completion of refresher or other~~
2 ~~courses of training.~~

3
4 **~~§854.214. Administrative Action Based on Unsatisfactory Performance.~~**

5
6 ~~(a) Causes for administrative action based on unsatisfactory performance. The~~
7 ~~happening of any one or more of the following acts or omissions by a manager shall~~
8 ~~subject a manager to administrative action for unsatisfactory performance:~~

9
10 ~~(1) Failing to personally operate the assigned facility as set forth in the permit or~~
11 ~~contract with the host and/or in the manager's record of assignment unless prior written~~
12 ~~approval to operate the facility in another manner has been obtained from DARS DBS.~~

13
14 ~~(2) Failing to pay money due from the operation of the facility, including, but not~~
15 ~~limited to, taxes, fees, or assessments to a governmental entity or supplier, or knowingly~~
16 ~~giving false or deceptive information to or failing to disclose required information to or~~
17 ~~misleading in any manner a governmental entity (including DARS DBS) or a supplier.~~

18
19 ~~(3) Failing to file required financial and other records with DARS DBS or preserve~~
20 ~~them for the time required by this subchapter.~~

21
22 ~~(4) Failing to cooperate in a timely manner with audits conducted by DARS DBS or~~
23 ~~other state or federal agencies.~~

24
25 ~~(5) Failing to maintain insurance coverage required by these policies and procedures.~~

26
27 ~~(6) Using BET equipment or facility premises to operate another business.~~

28
29 ~~(7) Failing to properly maintain facility equipment in a clean and operable condition~~
30 ~~within the scope of the manager's level of maintenance authorization.~~

31
32 ~~(8) Intentionally abusing, neglecting, using, or removing facility equipment without~~
33 ~~written DARS DBS authorization.~~

34
35 ~~(9) Operating a facility under the influence of substances that interferes with the~~
36 ~~operation of the facility.~~

37
38 ~~(10) Operating a BET facility in a manner that demonstrably jeopardizes the DARS~~
39 ~~DBS investment in the facility.~~

40
41 ~~(11) Using privileged information concerning an existing facility to compete with~~
42 ~~DARS DBS for the facility.~~

43
44 ~~(12) Failing to comply with any federal or state law prohibiting discrimination and~~
45 ~~failure to ensure that services are provided without distinction on the basis of race,~~
46 ~~gender, color, national origin, religion, age, political affiliation, or disability.~~

1
2 ~~(13) Failing to maintain the necessary skills and abilities for effectively managing a~~
3 ~~facility.~~

4
5 ~~(14) Using a facility to conduct unlawful activities.~~

6
7 ~~(15) Failing to comply with the manager's responsibilities under applicable law, this~~
8 ~~subchapter, the requirements of the BET manual, or any proper and authorized instruction~~
9 ~~by DARS DBS personnel.~~

10
11 ~~(16) Communicating or causing another person to communicate with a member of a~~
12 ~~selection panel or an applicant for a facility then being considered for assignment for the~~
13 ~~purpose of influencing or manipulating the selection of an applicant by offering to give a~~
14 ~~thing or act of value, including promises of future benefit, or by threat.~~

15
16 ~~(17) Failing to complete annual continuing education requirements.~~

17
18 ~~(b) Administrative action pending an appeal. DARS DBS may at its discretion suspend~~
19 ~~administrative action pending the outcome of an appeal.~~

20
21 ~~(c) Types of administrative actions. There are five types of administrative actions based~~
22 ~~on unsatisfactory performance:~~

23
24 ~~(1) Written reprimand. Written reprimand means a formal statement describing~~
25 ~~violations of applicable law, this subchapter, the requirements of the BET manual, or any~~
26 ~~proper and authorized instruction by DARS DBS personnel.~~

27
28 ~~(2) Probation. Probation means allowing a licensee to continue in BET in an effort to~~
29 ~~satisfactorily remedy a condition that is not acceptable under this subchapter. If the~~
30 ~~condition causing probation is satisfactorily remedied within the time periods specified in~~
31 ~~the written notice of probation, the probation will be lifted. If the unacceptable condition~~
32 ~~is not remedied within the time specified, additional and more serious administrative~~
33 ~~actions may ensue. When a licensee who has been on probation two times in a three-year~~
34 ~~period qualifies for probation for the third time within those three years, the licensee's~~
35 ~~license may be revoked according to DARS DBS procedures.~~

36
37 ~~(3) Loss of facility. Loss of facility means the removal of a manager from the~~
38 ~~manager's current facility for administrative reasons when the manager's actions or~~
39 ~~inactions are endangering the state's investment in the facility.~~

40
41 ~~(4) Termination. Termination means the cessation of a license issued to a licensee to~~
42 ~~operate a facility and the removal of the individual from BET.~~

43
44 ~~(5) Emergency removal of manager.~~
45

1 ~~(A) A manager may be summarily removed from a facility in an emergency. An~~
2 ~~emergency shall be considered to exist when DARS DBS, in consultation with the ECM~~
3 ~~chair, determines that some act or acts or some failure to act of that manager or any~~
4 ~~person who is an employee, servant, or agent of such manager, will, if such removal does~~
5 ~~not occur:~~

6
7 ~~(i) result in a clear danger to the health, safety, or welfare of any person or to the~~
8 ~~property of any person in or around the facility; or~~

9
10 ~~(ii) result in a deterioration of the existing or future relationship with the host, thereby~~
11 ~~putting the continuation of the facility in jeopardy; or~~

12
13 ~~(iii) present a clear potential of substantial loss or damage to the property of the State of~~
14 ~~Texas.~~

15
16 ~~(B) In any case in which a manager has been summarily removed from a facility on an~~
17 ~~emergency basis for any of the reasons set forth in subparagraph (A) of this paragraph,~~
18 ~~the manager shall be entitled to have a hearing about the necessity of the removal within~~
19 ~~ten days after the removal has occurred.~~

20
21 ~~(C) The time period for the hearing may be extended only by mutual agreement of the~~
22 ~~manager and DARS DBS provided that if an official holiday of the State of Texas falls~~
23 ~~within the period, then the period shall be extended by the time of the holiday; or if the~~
24 ~~services of an arbitrator cannot be obtained in time to afford the hearing within the~~
25 ~~period, then the period shall be extended by the time necessary to obtain the services of~~
26 ~~an arbitrator and schedule the hearing.~~

27
28 ~~(D) If the manager desires to have a hearing, the manager shall notify DARS DBS in~~
29 ~~writing within 48 hours following the removal. The written notification need only state~~
30 ~~the name of the manager, the location of the facility, and that the manager desires to have~~
31 ~~a hearing about the need for summary removal. The request may be delivered to the BET~~
32 ~~director, the assistant commissioner, or any local BET staff member in the geographical~~
33 ~~area in which the facility is located.~~

34 —
35 ~~(E) Upon receipt of any such request, the BET director shall obtain the services of an~~
36 ~~arbitrator from the American Arbitration Association ("AAA") or other similar~~
37 ~~organization to conduct the hearing.~~

38 —
39 ~~(F) The manager shall be notified of the date, time, and place of the hearing. To the~~
40 ~~extent possible, the hearing shall be conducted in an area near the location of the facility.~~

41 —
42 ~~(G) The hearing shall be conducted in accordance with the rules of the American~~
43 ~~Arbitration Association, except that the arbitrator shall be requested to announce orally a~~
44 ~~decision at the conclusion of the hearing.~~

1 ~~(H) If the arbitrator determines that no emergency necessitating the removal of the~~
2 ~~manager existed, then the manager shall be immediately restored to the operation of the~~
3 ~~facility.~~

4
5 ~~(I) No determination made as a result of the hearing shall operate to prejudice the~~
6 ~~rights of the manager to proceed with a grievance in accordance with the terms of this~~
7 ~~subchapter and the Act.~~

8
9 ~~(d) Administrative procedures.~~

10
11 ~~(1) DARS DBS shall decide what administrative action to take based on the~~
12 ~~seriousness of the violation, the damage to BET, and the licensee's record.~~

13
14 ~~(2) Upon receipt of information which indicates that administrative action may be~~
15 ~~appropriate, DARS DBS shall take the following actions before making a determination~~
16 ~~about taking administrative action:~~

17
18 ~~(A) DARS DBS shall notify the licensee in writing of the allegations and reasons that~~
19 ~~administrative action is being considered. The notice shall either be hand delivered and~~
20 ~~read to the licensee, or be delivered to the licensee's work or home address.~~

21
22 ~~(B) The licensee shall have 5 business days to respond, either in person or in writing, to~~
23 ~~the notice. The response shall be made to the individual designated in the notice. After~~
24 ~~receiving the licensee's response, DARS DBS shall decide what administrative action, if~~
25 ~~any, is appropriate. If no response is timely received from the licensee, DARS DBS shall~~
26 ~~decide without the licensee's response what administrative action, if any, will be taken.~~

27
28 ~~(C) If a decision is made to issue a written reprimand, the written reprimand will be~~
29 ~~accompanied by a brief summary of the evidence justifying the reprimand, suggested~~
30 ~~steps for correcting the violation, and consequences of not correcting the violation. All~~
31 ~~reprimands shall contain notice of the licensee's right to appeal the reprimand and a~~
32 ~~statement that failure to correct the violation may result in further administrative action.~~

33
34 ~~(D) If a decision is made to place a licensee on probation, DARS DBS shall deliver to~~
35 ~~the licensee a letter of probation containing the following:~~

36
37 ~~(i) the specific reasons for probation;~~

38
39 ~~(ii) the remedial action required to remove the licensee from probation;~~

40
41 ~~(iii) the time within which the remedial action must take place;~~

42
43 ~~(iv) the consequences of failure to take remedial action within the prescribed time frame;~~
44 ~~and~~

45
46 ~~(v) notice of the licensee's right to appeal.~~

1
2 ~~(E) Upon satisfactory completion of the remedial action outlined in the letter of~~
3 ~~probation, a licensee shall be removed from probation.~~

4
5 ~~(F) Failure of the licensee to complete remedial requirements within the prescribed time~~
6 ~~frame shall result in one or more of the following actions:~~

7
8 ~~(i) required training;~~

9
10 ~~(ii) extension of probation;~~

11
12 ~~(iii) restrictions on applying for another facility;~~

13
14 ~~(iv) removal from the facility; or~~

15
16 ~~(v) termination of license.~~

17
18 ~~(G) If, after the manager has had an opportunity to respond, a decision is made that~~
19 ~~sufficient grounds exist to remove the manager from a facility, DARS DBS shall notify~~
20 ~~the manager in writing by hand delivery or certified U.S. Mail, return receipt requested,~~
21 ~~that the manager's assignment to the BET facility has been terminated and the manager~~
22 ~~must vacate the facility. The removal letter shall contain the following information:~~

23
24 ~~(i) specific reasons for removal from the facility;~~

25
26 ~~(ii) actions required by the manager, if any;~~

27
28 ~~(iii) requirements for obtaining reassignment; and~~

29
30 ~~(iv) notice of the manager's right to appeal under the Act.~~

31
32 ~~(H) If, after the manager has had an opportunity to respond, a decision is made that~~
33 ~~sufficient grounds exist for termination, DARS DBS shall notify the manager in writing~~
34 ~~by hand delivery or certified U.S. Mail, return receipt requested, that DARS DBS has~~
35 ~~decided that sufficient cause exists to terminate the manager's license. The manager shall~~
36 ~~be instructed to vacate the facility if he or she has not already done so. The termination~~
37 ~~letter shall contain the following information:~~

38
39 ~~(i) specific reasons for termination;~~

40
41 ~~(ii) actions required by the licensee, if any;~~

42
43 ~~(iii) procedures for applying for any other DARS DBS services for which the person~~
44 ~~may be eligible; and~~

45
46 ~~(iv) notice of the licensee's rights under the Act.~~

1
2 ~~(3) — The provisions of paragraph (2) of this subsection notwithstanding, pending a~~
3 ~~determination with respect to administrative action, a manager may be removed from a~~
4 ~~facility if DARS DBS considers such removal in the best interest of BET and efforts to~~
5 ~~correct the deficiencies have been unsuccessful.~~

6
7 ~~(4) — During the license termination process, the manager shall not be eligible for~~
8 ~~assignment to any other BET facility.~~

9
10 ~~(e) — Before termination of a license, DARS DBS shall afford the licensee an opportunity~~
11 ~~for a full evidentiary hearing.~~

12
13 **~~§854.215. Procedures for Resolution of Manager's Dissatisfaction.~~**

14
15 ~~(a) — Appealable actions. This section provides the procedures for licensees who are~~
16 ~~dissatisfied with a DARS DBS action arising from the operation of BET.~~

17
18 ~~(b) — Actions not subject to appeal. The phrase "DARS DBS action arising from the~~
19 ~~operation of BET" in subsection (a) of this section does not include the following actions~~
20 ~~of the DARS DBS:~~

21
22 ~~(1) — the hiring, firing, or discipline of DARS DBS employees;~~

23
24 ~~(2) — the challenge of federal or state law, or rules previously approved by the Secretary~~
25 ~~of Education under the Act; or~~

26
27 ~~(3) — an action by DARS DBS unless it is alleged that the action is in violation of~~
28 ~~applicable law, this subchapter, the requirements of the BET manual, or any proper and~~
29 ~~authorized instruction by DARS DBS personnel or is unreasonable. Unreasonable shall~~
30 ~~mean without rational basis or arbitrary and capricious.~~

31
32 ~~(c) — DARS DBS discretion and sovereign immunity. DARS DBS does not waive its right~~
33 ~~and duty to exercise its lawful and proper discretion. DARS DBS does not waive its~~
34 ~~sovereign immunity.~~

35
36 ~~(d) — Remedies. Remedies available to resolve dissatisfaction shall correct the action~~
37 ~~complained of from the earlier time of:~~

38
39 ~~(1) — agreement by the parties about an appropriate remedy, or~~

40
41 ~~(2) — a final resolution under the Act that DARS DBS acted in violation of applicable~~
42 ~~law, this subchapter, the requirements of the BET manual, or any proper and authorized~~
43 ~~instruction by DARS DBS personnel or acted unreasonably.~~

44
45 ~~(e) — Informal procedures to review dissatisfactions. At the request of a licensee, DARS~~
46 ~~DBS shall arrange for and participate in informal meetings in an effort to quickly resolve~~

1 a matter of dissatisfaction arising from the operation or administration of BET. The
2 informal process is for the purpose of quickly and amicably resolving an issue in
3 controversy. It is not for the purpose of denying or delaying the manager's right to pursue
4 resolution of a matter through a full evidentiary hearing. At any point during the informal
5 process, either party may elect to terminate the following informal process procedures:
6

7 ~~(1) — A licensee may initiate informal procedures by notifying DARS DBS in writing~~
8 ~~through the BET director that the licensee is dissatisfied with a matter arising from the~~
9 ~~operation or administration of BET. The written notice must describe with reasonable~~
10 ~~particularity the specific matter in controversy, the date the action occurred, or an~~
11 ~~approximate date if the exact date is not known, and the licensee's desired relief or~~
12 ~~remedy. If the licensee is dissatisfied with a series of the same or related actions over a~~
13 ~~period of time, the notice should describe to the best of the licensee's ability the time~~
14 ~~frame of the events and include the date of the most recent event about which the licensee~~
15 ~~is dissatisfied.~~

16
17 ~~(2) — To ensure that informal resolution is possible in a timely manner, the licensee's~~
18 ~~request to initiate informal proceedings must be filed with DARS DBS no later than 20~~
19 ~~business days after the most recent event specified in the request. DARS DBS shall~~
20 ~~within a reasonable time arrange a meeting at a location, date, and time satisfactory to all~~
21 ~~parties.~~

22
23 ~~(3) — The licensee must notify DARS DBS when filing a request for informal~~
24 ~~proceedings if the licensee will be represented by counsel during mediation. DARS DBS~~
25 ~~will be represented by counsel only when the licensee is represented by counsel.~~

26
27 ~~(4) — Meetings shall take place in an informal environment and shall be attended by the~~
28 ~~licensee, a BET staff person, and a neutral third party who shall serve as an informal~~
29 ~~mediator during the discussions.~~

30
31 ~~(5) — The neutral third party shall be a person certified in conducting mediations.~~

32
33 ~~(6) — The neutral third party's responsibility is to report to DARS DBS only that the~~
34 ~~effort to resolve the matter to the licensee's satisfaction was or was not successful. If an~~
35 ~~agreement is reached, then the actions agreed to with respect to the facility or licensee~~
36 ~~shall be immediately taken.~~

37
38 ~~(7) — The provisions concerning mediation under Chapter 101 of this title (relating to~~
39 ~~Administrative Rules and Procedures) shall not apply to or control the informal resolution~~
40 ~~procedures in this subchapter.~~

41
42 ~~(f) — Full evidentiary hearing. A manager has the right to request a full evidentiary hearing~~
43 ~~to resolve dissatisfaction according to the following:~~

44
45 ~~(1) — A manager has the right to request a full evidentiary hearing without first going~~
46 ~~through mediated meetings described in subsection (e) of this section.~~

1
2 ~~(2) — A request for an evidentiary hearing must be made no later than the 20th business~~
3 ~~day after the occurrence of the agency action about which the manager complains. The~~
4 ~~assistant commissioner, upon request of the complaining party, may extend the time~~
5 ~~period for filing a grievance upon the showing of good cause by the complaining party~~
6 ~~for such additional period if such request is made no later than the 20th business day after~~
7 ~~the occurrence of the agency action about which the manager complains.~~

8
9 ~~(3) — A manager requesting a full evidentiary hearing after the conduct of mediated~~
10 ~~meetings described in subsection (e) of this section must request such hearing in writing~~
11 ~~no later than the 20th business day after receipt of the assistant commissioner's decision.~~

12
13 ~~(4) — A request for a full evidentiary hearing must be in writing and transmitted to the~~
14 ~~assistant commissioner. A request that is postmarked within the applicable time frame~~
15 ~~shall be considered timely delivered if properly posted.~~

16
17 ~~(5) — The request for a full evidentiary hearing must describe the specific action with~~
18 ~~reasonable particularity sufficient to provide notice as to the action which is alleged to be~~
19 ~~unreasonable or in violation of applicable law, this subchapter, the requirements of the~~
20 ~~BET manual, or any proper and authorized instruction by DARS DBS personnel. The~~
21 ~~request must, to the best of the complainant's knowledge, contain the date the action~~
22 ~~occurred and the law or regulation must be reasonably identified if an action is alleged to~~
23 ~~be in violation of law, this subchapter, the requirements of the BET manual, or~~
24 ~~regulation. The request must also identify the desired relief or remedy.~~

25
26 ~~(6) — The manager may be represented in the evidentiary hearing by legal counsel or~~
27 ~~other representative of the manager's choice, at the manager's expense.~~

28
29 ~~(7) — Reader or other communication services, if needed, shall be arranged for the~~
30 ~~manager by DARS DBS upon request by the manager at least three business days prior to~~
31 ~~the hearing date.~~

32
33 ~~(8) — The manager shall be notified in writing of the time and place fixed for the hearing~~
34 ~~and of the manager's right to be represented by legal or other counsel.~~

35
36 ~~(9) — Selection of the hearing officer.~~

37
38 ~~(A) — The hearings coordinator, DARS Legal Services, shall select, on a random basis, a~~
39 ~~hearing officer from a pool of persons qualified according to this section.~~

40
41 ~~(B) — The hearing officer shall be an impartial and qualified individual who:~~

42
43 ~~(i) has no involvement either with the DARS DBS action that is at issue or with the~~
44 ~~administration or operation of BET;~~

1 ~~(ii) is not an employee of a public agency (other than an administrative law judge,~~
2 ~~hearing examiner, or employee of an institution of higher education);~~

3
4 ~~(iii) has knowledge of the Act and any applicable state and federal regulations governing~~
5 ~~the appeal;~~

6
7 ~~(iv) has received training specified by DARS with respect to the performance of official~~
8 ~~duties; and~~

9
10 ~~(v) has no personal, professional, or financial interest that would be in conflict with the~~
11 ~~objectivity of the individual.~~

12
13 ~~(C) An individual is not considered to be an employee of a public agency for the~~
14 ~~purposes of subparagraph (B)(ii) of this paragraph solely because the individual is paid~~
15 ~~by the agency to serve as a hearing officer.~~

16
17 ~~(10) Hearings shall be conducted in accordance with the Act, Texas Government Code~~
18 ~~§2001.051 et seq., and this subchapter to the extent those procedures do not conflict with~~
19 ~~the Act and its implementing regulations or this subchapter.~~

20
21 ~~(11) Licensees bringing complaints shall have the burden of proving their cases by the~~
22 ~~preponderance of evidence. Licensees shall present their evidence first. When a hearing is~~
23 ~~requested as a result of administrative action by DARS DBS against a licensee, DARS~~
24 ~~DBS shall have the burden of proving its case by a preponderance of the evidence and~~
25 ~~shall present its evidence first.~~

26
27 ~~(12) Transcription of Proceedings.~~

28
29 ~~(A) Unless precluded by law, the hearing shall be recorded electronically by tape~~
30 ~~recorder or similar device either by the hearing officer or by someone designated by the~~
31 ~~hearing officer. Such tape recording shall be the official record of the testimony recorded~~
32 ~~during the hearing. Any party, however, may request, at the party's expense, that the~~
33 ~~hearing be recorded by a court reporter if the request is made within ten days of the date~~
34 ~~for the hearing.~~

35
36 ~~(B) In lieu either of a recording of the testimony electronically or of the reporting of~~
37 ~~testimony by a court reporter, the parties to a hearing may agree upon a statement of the~~
38 ~~evidence, to use taped transcription as a statement of the testimonial evidence, or agree to~~
39 ~~the summarization of testimony before the hearing officer; provided, however, that~~
40 ~~proceedings or any part of them must be transcribed on written request of any party.~~

41
42 ~~(C) Unless otherwise provided in this subchapter, the party requesting a transcription of~~
43 ~~any electronic recording of the proceedings shall bear the cost for transcribing any such~~
44 ~~electronically recorded testimony. Nothing provided for in this section limits DARS DBS~~
45 ~~to a stenographic record of the proceedings.~~

1 ~~(D) The record of the proceedings, including exhibits and any transcription, shall be~~
2 ~~made available to the parties by DARS DBS no later than the 30th business day after the~~
3 ~~close of the hearing.~~

4
5 ~~(13) The hearing officer shall issue a recommendation which shall set forth the principal~~
6 ~~issues and relevant facts adduced at the hearing and the applicable provisions of law, rule,~~
7 ~~the requirements of the BET manual, or any proper and authorized instruction by DARS~~
8 ~~DBS personnel. The recommendation shall contain findings of fact and conclusions with~~
9 ~~respect to each of the issues, and the reasons and bases for the conclusions.~~

10
11 ~~(14) In formulating a recommendation, the hearing officer shall not evaluate whether the~~
12 ~~DARS DBS actions were wise, efficient, or effective. Rather, the hearing officer is~~
13 ~~limited to determining whether the DARS DBS actions were unreasonable, or violated~~
14 ~~applicable law, this subchapter, the requirements of the BET manual, or any proper and~~
15 ~~authorized instruction by DARS DBS personnel.~~

16
17 ~~(15) Should the hearing officer find that the actions taken by DARS DBS unreasonable,~~
18 ~~or violated applicable law, this subchapter, the requirements of the BET manual, or any~~
19 ~~proper and authorized instruction by DARS DBS personnel, the hearing officer shall also~~
20 ~~recommend any prospective action necessary to correct the violations.~~

21
22 ~~(16) The hearing officer's recommendation shall be made no later than the 30th business~~
23 ~~day after the receipt of the official transcript. The recommendation shall be delivered~~
24 ~~promptly to the assistant commissioner.~~

25
26 ~~(17) The assistant commissioner shall review the recommendation of the hearing officer~~
27 ~~and forward a decision to the manager no later than the 20th business day after receipt of~~
28 ~~the hearing officer's recommendation. The assistant commissioner's decision shall include~~
29 ~~findings of fact and conclusions of law based on the evidence in the record and separately~~
30 ~~stated.~~

31
32 ~~(18) Subject to the provisions of Texas Government Code §2001.144 and §2001.146,~~
33 ~~the assistant commissioner's decision shall be the final decision of DARS DBS. Any such~~
34 ~~decision becomes the final decision of DARS DBS if a timely motion for rehearing or~~
35 ~~reconsideration is not filed.~~

36
37 ~~(g) Arbitration. A manager appealing the DARS DBS decision must file a complaint~~
38 ~~with the Secretary of Education in conformity with the provisions of the implementing~~
39 ~~regulations at 34 CFR, §395.13 of the Act, pertaining to arbitration of vendor complaints.~~

40
41 ~~**§854.216. Establishing and Closing Facilities.**~~

42
43 ~~(a) Establishing facilities. On its own initiative, at the request of an agency that controls~~
44 ~~federal or state property, at the request of the ECM, or at the request of a private~~
45 ~~organization, DARS DBS shall survey the property, blueprints, or other available~~
46 ~~information concerning the property to determine whether the installation of a BET~~

1 facility is feasible and consonant with applicable laws and regulations and with DARS
2 DBS vocational rehabilitation objectives.

3
4 ~~(1) If the installation of a BET facility is determined to be feasible, the DARS DBS
5 shall proceed to develop plans for the establishment of a facility in accordance with
6 procedures promulgated and implemented by the DARS DBS staff and, when the facility
7 is developed, shall assign a manager to the facility.~~

8
9 ~~(2) If it is determined that a blind person could not properly operate a vending facility
10 at a particular location, the pertinent facility data will be presented to the assistant
11 commissioner of the Department of Assistive and Rehabilitative Services to determine if
12 a person whose disability is not of a visual nature could operate the facility in a proper
13 manner. The phrase "could not properly operate a vending facility" includes the
14 existence, at the time of the establishment of the facility, of laws or regulations that
15 restrict the blind from operating a particular vending facility as defined under state and
16 federal laws.~~

17
18 ~~(b) Closing facilities. Except for temporary closings by the DARS DBS staff, no BET
19 facility shall be closed by DARS DBS until each of the following has occurred:~~

20
21 ~~(1) The BET director has certified to the assistant commissioner that the facility is no
22 longer a feasible or viable BET facility and provides reasons for that opinion.~~

23
24 ~~(2) The assistant commissioner has approved the proposed closing of the facility.~~

25
26 **~~§854.217. Forms.~~**

27
28 ~~DARS DBS adopts the following forms by reference. Copies may be requested from any
29 local DARS DBS office or by calling DARS' toll free line (1-800-628-5115).~~

30
31 ~~(1) BET Application (BE 114) dated November 1, 2007.~~

32
33 ~~(2) Business Enterprises of Texas Monthly Facility Report, (BE 117), dated November
34 1, 2007.~~

35
36 ~~(3) BET Assignment Requirements for Operation of a Vending Facility Under
37 Randolph Sheppard Act and Applicable State Statutes Between DARS DBS and a
38 Licensed Vendor (BE 121), dated November 1, 2007.~~

39
40 ~~(4) Equipment Loan Agreement (BE 122) dated November 1, 2007.~~