


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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Our File No. 727

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-11-81
DATE FOR REVIEW 9/21
DATE DUE 9/25

Adopted w/a hearing ____
Adopted w/o a hearing X
Temporary rule ____

Approved X Disapproved ____ Returned to Agency 9/28

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 9/28 REVISOR disapproved 9/16/81 approved 9/18/81

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✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 9.8.81

✓ Notice of Intent to Solicit Outside Opinion SR. 1.30.78

✓ Order for rulemaking
____ Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
7.1.81 ✓ At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ 7.6.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : MR. BOB HAMPER
Manual Editor
Fourth Floor Centennial Bldg.

DATE: September 28, 1981

ATTN : John Kerwin
Special Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Amendments to 12 MCAR 2.079 Governing All Vending Stands and Business Enterprises of the Services for the Blind

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

TAM/cae

Enc.

cc: Kathy Burek
Duane Harves

AG copy.

Department of Public Welfare
Social Services Division

Adopted Rule Governing All Vending Stands and Business Enterprises of the Services for the Blind

Rule as Adopted

12 MCAR S 2.079 Rules governing all vending stands and business enterprises of the services for the blind.

A. Legal authority and scope of rules. Pursuant to Minn. Stat. SS 15.0412, subd. 3, and 248.07, subd. 11 ~~(1980)~~, the following rules are hereby issued by the Commissioner of Public Welfare to govern all vending stands and business enterprises established by the Services for the Blind, Department of Public Welfare, for which the Department of Public Welfare is responsible. Licenses to blind persons will be issued in accordance with these rules and applicable statutes by the commissioner or his designee, hereinafter to be known as the licensing agency.

B. Issuance and conditions of licenses.

1. Selection of stand operators. The selection of stand operators will be made on an objective basis, including a thorough evaluation of the following: experience, training,

former vocations, education, and other factors that relate to job requirements. Preference will be given to blind persons who are in need of employment. The following specific requirements will also be adhered to~~:~~. Blind persons selected as operators will:

a. Be determined, after examination by a physician skilled in diseases of the eye or by an optometrist~~:~~, whichever such person shall select, to have

(1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its evident diameter subtends an angle of no greater than 20 degrees,

b. Be citizens of the United States, — what about p.r.g. lawfully admitted to work

c. Be certified as qualified for the operation of a vending stand by the rehabilitation staff of the Services for the Blind, Department of Public Welfare.

2. License period and license termination.

a. Each license will be issued for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

~~1.~~ (1) Failure to operate in accordance with this rule, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property;

~~2.~~ (2) Improvement of vision so that the operator no longer meets the definition of blindness as stated in part B.1.a. of this rule;

~~3.~~ (3) Extended illness with medically documented diagnosis of prolonged incapacity of the operator to operate the vending stand in a manner consistent with the needs of the location or other available locations in the program;

~~4.~~ (4) Withdrawal of the operator from the program upon the operator's written notification to the licensing agency.

b. The licensing agency shall promptly notify by

certified mail or personal service any vending stand operator whose license is proposed to be revoked. This notification shall state the grounds for such action and shall inform the operator of the right to appeal the action. The operator will be afforded an opportunity for a fair hearing before termination of the license as described in Section I. of this rule.

3. Operator agreements.

a. Each licensed operator will sign an agreement for the operation of an assigned vending stand, and will sign a new agreement each time the operator moves or transfers to another vending stand.

b. The operator's agreement to operate a vending stand may be revoked or temporarily suspended in those instances where the operation, integrity, or reputation of the program may be damaged. The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose agreement is suspended or revoked. The notification shall state the grounds for such action and shall inform the operator of the right to appeal the action, as described in Section I. of this rule. The action to suspend or revoke an agreement does not automatically mean the termination of the operator's license. Notice of intent to terminate the operator's license shall require a separate notice, as described in part B.2.b. of this rule.

C. Furnishing equipment and initial stocks. The licensing agency is responsible:

1. For furnishing each vending stand or business enterprise with adequate, suitable equipment and maintenance, repair, and replacement of such equipment.

2. For furnishing each vending stand or business enterprise with adequate initial stocks of merchandise and supplies. Subsequent purchase of merchandise shall be made by the operator out of current receipts. Merchandise shall be replaced as sold, maintaining the inventory at the minimum of the original inventory.

D. Right to, title to, and interest in the vending stand

equipment and stocks. The right to, title to, and interest in the vending stand equipment used in the program is vested in the State of Minnesota. Operators will be required to acquire ownership of merchandise and supplies through reimbursing the licensing agency for such expenditures, by monthly payments extended over a three-year period. Upon approval of the licensing agency additional time may be granted in hardship cases, the purpose of which is to assure that no individual be denied the opportunity to become an operator because of the operator's inability to purchase the initial stock. Upon termination of the operator's license, the licensing agency will purchase, at the prevailing wholesale price, all saleable merchandise and, at an amortized price, all supplies remaining in the stand, assuming there is no delinquency in the operator's accounts with the licensing agency. No fixtures or equipment shall be added, altered, or removed from the stand except at the direction of the licensing agency. The operator will exercise all possible care in the use of fixtures and equipment, making no alterations, changes, or additions.

E. Funds set aside from vending stand proceeds.

1. The licensing agency will set aside or cause to be set aside from the ~~month~~ monthly net proceeds of the operation of vending stands the following amounts:

a. On the 1st $100 or portion thereof, 2%

b. On the 2nd $100 or portion thereof, 4%

c. On the 3rd $100 or portion thereof, 6%

d. On the 4th $100 or portion thereof, 8%

e. On the 5th $100 or portion thereof, 10%

f. On the 6th $100 or portion thereof, 12%

g. On the 7th $100 or portion thereof, 14%

and any amounts over $700 16%

"Net proceeds," as used herein, means the monthly cash receipts including any vending machine or other income, less merchandise purchases, general expenses, and pay roll (excluding set-aside charges). what

2. This rate supersedes any previous rate heretofore

established by any agreements or policies of the licensing agency. The operator shall pay these set-aside funds monthly to the licensing agency. These set-aside funds shall be used only to the extent necessary and may be used for the sole purpose of:

a. Maintenance and replacement of equipment;

b. The purchase of new equipment; and

c. The management services that are specified in state law.

3. The operator management committee, as defined in part H.3. of this rule, will participate with the licensing agency in the establishment of a set-aside schedule covering each of the purposes for which the set-aside funds are intended to be used, and will be reviewed annually to determine the need for change based upon the previous year's expenditures. The schedule shall be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required, with the allowances for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis. Changes, when necessary, shall be by amendment to this rule.

F. Distribution and use of income from vending machines on federal property.

Why the Distinction?

1. Vending machine income from vending machines on federal property which has been disbursed to the licensing agency by a property managing department, agency, or instrumentality of the United States shall accrue to each blind operator operating a vending stand on such federal property in an amount not to exceed the average net income of the total number of blind operators within the state program, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind operator in any amount exceeding the average net income of the total number of blind operators in the United States.

2. No blind operator shall receive less vending machine income than the operator was receiving during the calendar year

prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

3. No limitation shall be imposed on income from vending machines combined to create a vending stand when such stand is maintained, serviced, or operated by a blind operator. The licensing agency will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amounts eligible to accrue to blind operators.

4. The licensing agency will disburse vending machine income to blind operators on at least a quarterly basis.

5. Vending machine income retained by the licensing agency will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been furnished information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; or management services. Any set-aside charged to blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

G. Policies governing the duties, supervision, transfer, and participation of operators.

1. Each operator shall be entitled to the net proceeds of the operation of the vending stand he/she operates, less the amount set-aside by the licensing agency.

2. Each operator shall agree to:

a. Perform faithfully and to the best of the operator's ability the necessary duties in connection with the operation of a vending stand in accordance with the licensing agency's rules, the terms of the licensing agency's permit to operate in the building or property, and the agreement with the operator;

b. Cooperate with official and duly authorized representatives of the licensing agency in connection with their official program responsibilities;

c. Operate the vending stand in accordance with all applicable health laws and regulations;

d. Furnish monthly reports to the licensing agency by the tenth of the following month, listing daily sales, other income, purchases, other expenditures, and personal withdrawals, and attaching all invoices properly receipted. Inventory of merchandise will be included when requested;

e. Make all purchases of merchandise on a strictly cash basis unless exception is permitted in writing by the licensing agency; and

f. Make no credit sales.

3. The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance and training as may be necessary to insure the operation of each vending stand in the most productive and efficient manner possible. This supervision, assistance and training must be performed in accordance with the following policies in addition to other provisions of this rule.

a. In entering agreements for new or vacated stands, preference on the basis of seniority of experience of operating stands under the control of the licensing agency shall be given to capable operators who are deemed competent to handle the enterprise under consideration. The application of such preference will not prohibit the licensing agency from selecting an operator from the community in which the stand is located. Seniority shall be determined on the basis of continuous service in the stand program while under contract with the licensing agency. In the case of broken service, previous service shall be considered only when termination was due to no fault of the operator. Termination for medical reasons may be considered as a leave of absence when so requested by the operator and approved by the licensing agency at the time of termination.

b. When it has been determined that a relief operator

or an assistant or assistants must be employed, the licensing agency shall first make attempts to locate a handicapped individual before approving the employment of a non-handicapped person. The wages paid for any help, including bookkeeping, must be in reasonable proportion to work performed and must be approved by the licensing agency.

c. The licensing agency shall approve the items and the selling prices at which those items may be sold, which comprise the merchandise inventory at each vending stand.

d. The operator must obtain the approval of the licensing agency before changing vendors with whom the operator does business in connection with the vending stand.

e. The operator will purchase liability insurance for the vending stand. The agency will purchase liability insurance for a vending stand only when, in the opinion of the licensing agency, it is deemed essential that the agency purchase this insurance.

H. Election, organization, and functions of the operator management committee.

1. The licensing agency and the elections sub-committee of the operator management committee will conduct an annual election for representatives to the operator management committee.

2. The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

a. Nominations will be solicited in each district for that district and state-wide for at-large representatives.

b. Elections will be by licensed operators in each district for their district and state-wide for at-large representatives.

c. Each term will be two years, with a limit of two successive terms.

d. The committee shall elect its own chairman and other officers. The chairman shall appoint sub-committees as necessary.

e. The full committee will meet a minimum of twice a year. Meetings may be called by notice of either the licensing agency or the chairman of the committee. Sub-committees will meet as necessary to carry on their functions.

f. The committee shall establish by-laws for the further rules, functioning and guidance of the committee.

3. The operator management committee's purpose and function is to:

a. Participate with the licensing agency in major administrative decisions and policy and program development;

b. Receive grievances of vending stand operators and serve as their advocates;

c. Participate with the licensing agency in the administration of the transfer and promotion system for vending stand operators;

d. Participate with the licensing agency in developing training and retraining programs; and

e. Sponsor, with the assistance of the licensing agency, meetings and instructional conferences for vending stand operators.

I. Review of agency decisions. Operators shall be informed in writing at the time they are licensed, of their right to and the procedures to be followed in obtaining an administrative review or a fair hearing regarding an agency decision.

1. An opportunity for an informal administrative review will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators an informal administrative review:

a. An operator or the operator's designee (who need not be an attorney) may request in writing, within 15 working days of the occurrence of the action, administrative review of the licensing agency action. This review will be made only by a member ~~of~~ or members of the administrative staff of the agency who have not in any way participated in the agency action in question.

b. The administrative review will be held during regular agency working hours, at a district or local office location. An administrative review will be conducted within 30 working days of receipt by the licensing agency of such a written request.

c. Documentation as to written requests for administrative review and actions and decisions resulting therefrom shall be maintained as part of the official record of the administrative review process.

d. When an informal administrative review does not resolve a dispute to the satisfaction of a blind operator, the blind operator may request that the licensing agency provide a fair hearing.

2. An opportunity for a fair hearing conducted pursuant to Minn. Stat. SS 15.0418-15.0422 will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators a fair hearing.

a. If an operator requests a fair hearing, such a request must be made either within 15 working days after an adverse decision based on an administrative review or, in the absence of an administrative review, within 15 working days of the occurrence of the action with which the operator is dissatisfied.

b. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the administrator of the licensing agency personally or by certified mail, return receipt requested. The request must specify the action being appealed and state in detail the basis for the appeal.

c. The hearing shall be held at a time and place convenient and accessible to the operator requesting a fair hearing. A hearing held during regular agency working hours and located at the state agency central office will be deemed among the convenient times and places. Upon receipt of the request, the licensing agency shall immediately request a hearing date

from the state Office of Administrative Hearings, and then notify the operator of the time and place for the hearing. The operator shall be provided a copy of the hearing procedures and rules.

d. After receipt of the report of the hearing examiner the state administrator (or, in the case of license revocation, the Commissioner of Public Welfare) shall issue a proposed decision. The proposed decision shall state that the decision shall become final 15 days after its issuance unless, before that date, the operator requests a review by a three-person appeal committee according to Minn. Stat. S 248.07, subd. 15(3). The appeal committee's recommendation will be made to the administrator of the licensing agency or the commissioner who shall issue a final decision modifying or affirming the proposed decision.

3. If an operator is dissatisfied with the decision rendered after a full evidentiary hearing, the operator may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, as authorized by federal regulations at 45 C.F.R. S 1369.13 (1979).

J. Access to program and financial information. Each operator shall be provided access to all program and financial data of the licensing agency relevant to the operation of the vending stand program, including quarterly and annual financial reports. Insofar as is practicable such data shall be made available in braille or recorded tape. At the request of an operator, the licensing agency will arrange a convenient time to assist in the interpretation of such data.

K. Explanation to operator of the operator's responsibilities and privileges. The licensing agency rules, the agreement with the operator, and any applicable regulations of the authority having charge of the property on which the vending stand or business enterprise is located shall be read and explained to each operator. A copy of the agreement and this rule will be furnished to each operator. The agreement between the licensing agency and the operator, consistent with

the provisions of this rule and signed by the operator, will be the operator's attestation that the agreement and this rule have been read to the operator and that the operator agrees to abide by them.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Public Welfare

Rule Numbers: 12 MCAR S 2.079

Rule Title: Adopted Rule Governing All Vending Stands and Business Enterprises of the Services for the Blind

Type of Rules: Permanent X

Temporary ____

Documents Incorporated by Reference: None

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
September 25 19 81
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Martinez
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Paul M. Marinac

Title: Assistant Revisor

Phone: 296-0948

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 28 1981
Joan Anderson Growe
Secretary of State
2:10 PM

State of Minnesota
Department of Public Welfare

In the Matter of the Proposed Amendments to 12 MCAR 2.079 Governing All Vending Stands and Business Enterprises of the Services for the Blind.

Statement of Need and Reasonableness

The Federal Randolph-Sheppard Act was passed by Congress in 1936 establishing the Vending Stand Program. This Act was last amended in December, 1975, and is found at 20 U.S.C. §§ 107-107f. The latest Federal rules issued pursuant to the Act were adopted March 23, 1977, and are found at 45 C.F.R., Part 1369 (1979).

The Minnesota Legislature passed enabling legislation consistent with the Federal Act, found at Minn. Stat. 248.07 (1980). Pursuant to this legislation and also the Federal Act, the Department of Public Welfare first adopted rules to govern all vending stands and business enterprises of the Services for the Blind in 1958, known as DPW Rule #79. This rule was last amended in 1961.

The Randolph-Sheppard Act states that the Secretary of Department of Health, Education and Welfare (now Department of Education) shall designate the State agency for the blind in each State as the agency to issue licenses to blind persons for the operating of vending stands. Pursuant to this part of the Act, the Secretary requires the State agency for the blind to submit an "Application for Designation as the Licensing Agency", and attach a copy of its rules which conform to all requirements of the Federal Act and Federal rules.

These proposed amendments to 12 MCAR 2.079 (DPW 79) are written so as to conform to the requirements of the Federal Act and the Federal rules. The statements of need and reasonableness for these proposed changes follow section-by-section.

Section A. Legal Authority.

The statutory references for the authority of the Commissioner of Public Welfare to promulgate and amend this rule must be changed because of statutory changes since the last amendment of the rule.

In the last sentence of this paragraph, the words "or his designee" have been added. The Commissioner in the past has delegated to the Administrator of Services for the Blind, the authority to issue licenses, and will likely continue this delegation of authority.

Section B. Issuances of Licenses.

Part 1. Selection of stand operators. The words "character", "personality", and "health" should be eliminated since they are ambiguous and may or may not be related to job requirements. The addition of the phrase "other factors that relate to job requirements" is reasonable and necessary to enable the licensing agency to consider any factor affecting the applicant's qualification for stand operation.

Subpart a. The expanded definition of blindness was added to the rule and is needed to describe the definition of legal blindness while avoiding problems of incorporation by reference.

Subpart c. (present rule). Age 21 as a minimum entry age was eliminated from the Federal Act and is no longer necessary in this rule.

Subpart c. (proposed rule). The word "qualified" was added to be consistent with the federal rules, 45 C.F.R. § 1369.7(a)(3). It is necessary to specify the criterion for certification by the rehabilitation staff.

Subpart e. (present rule). A one year residence of the state was eliminated from the Federal Act and is no longer necessary in this rule.

Part 2. License period and license termination.

Subpart a.1. Licenses may be terminated for "good cause shown." It is not necessary to list these general causes for termination. They all fit, along with other causes, under the term "good cause." Some of them are vague and may or may not be related to job performance.

Subpart a.2. It is necessary to state that improvement of vision so that the operator is no longer legally blind, is a specific cause for termination from the Program, since legal blindness is a specific requirement to be an operator.

Subpart a.3. (proposed rule). It is necessary to state that extended illness may be cause for termination.

Subpart a.4. For clarification purposes, it should be recognized that a written notification by the operator that he/she is withdrawing from the Program is termination of the license.

Subpart b. This statement is necessary to indicate how a notice of proposed license termination shall be done, and the right of the operator to appeal.

Subpart a.3. (present rule). This statement on income from vending machines is out-of-place in this rule, and also is not needed in the rule.

Part 3. Operator Agreements.

Subpart a. This statement is necessary to clarify the difference in status between "license" and "agreement". The license is authority to be a vending stand operator. The agreement is the authority to operate a specific vending stand.

Subpart b. It is necessary to indicate that an agreement with an operator can be suspended or revoked, and indicate the right to appeal. Further, it is necessary to indicate that an action to suspend or terminate an agreement is distinct from action to terminate a license.

Section C. Furnishing equipment and initial stocks.

Part 1. The word "replacement" is added to make it clear that the licensing agency will provide not only the initial equipment and its maintenance and repair, but any future replacement of equipment.

Section D. Right to, title to, and interest in the vending stand equipment and stocks.

The words "the operator" has been substituted for the word "his" not only in this sentence but throughout this rule so as to remove any sexist language.

Section E. Funds set aside from vending stand proceeds.

Part 1. 20 U.S.C. § 107b(3) specifically states that set aside funds will be based upon "net proceeds." The rules pursuant to this Act, at 45 C.F.R. § 1369.1(k), define the term "net proceeds." It is necessary that this definition be stated in this rule, and the words "net proceeds" substituted for the words "net profit" throughout this rule.

Subpart a. through h. The formula to establish the amounts to be set aside will be changed so as to produce approximately the same annual income to the Program as did the old formula. The percentages paid to the agency by the operators are reduced.

Part 2. (present rule). There is no need for this paragraph in this rule. The described records will still be kept for various purposes, but authorization in the rule is unnecessary and confusing.

Part 3. The Operator Management Committee, as further defined in Section H.3. of this rule, did participate in establishing the set-aside schedule as shown in Section E.1. This rule needs to indicate this, as required by 20 U.S.C. § 107b-1(3). Future changes in the set-aside schedule must be made through rulemaking.

Section F. Distribution and use of income from vending machines on Federal property.

Part 1. through Part 5. 20 U.S.C. § 107d-3 provides that, under certain conditions, vending machine income on Federal property shall be disbursed to the licensing agency, and the Act directs how the licensing agency may use these funds. The Federal rules at 45 C.F.R. § 1369.8, further define the conditions for handling these funds.

It is necessary and reasonable to insert Part 1. through Part 5. in this rule to indicate that the licensing agency is complying with this section of the Act and to clearly communicate these conditions to stand operators.

Section G. (formerly Section F.). Policies governing the duties, supervision, transfer, and participation of operators.

Part 1. It is necessary to change the term "net profit" to "net proceeds" to correspond with the above Section E. Part 1. The present rule when it was originally filed required all operators to sign a new agreement. The proposed changes in this rule will not affect any of the conditions in any existing operator agreements. This sentence is no longer necessary in this rule and is removed so as to avoid confusion.

Part 3. It is necessary to state the requirements in this rule, that training will be provided to vending stand operators to maximize their vocational potential as required by 20 U.S.C. § 107d-4.

Subpart a. Section B. of this rule defines the difference between "license" and agreement" under Part 2. and Part 3. This change is to clear up the confusion that exists in the use of the two words. (See Section B. Part 3. of this statement.)

Subpart e. It is necessary to clarify that the operator has the basic responsibility to purchase liability insurance for a vending stand. Only in selected situations will the agency purchase such insurance. An example of such situations is where a vending stand has been developed by the agency and, prior to the selection of the operator, insurance must be purchased as part of the agreement with the building manager.

Section H. Election, organization, and function of the Operator Management Committee.

The Federal Act 20 U.S.C. § 107b-1(2) and (3) requires that the licensing agency establish a committee of blind vendors and list the responsibilities of this committee.

In 1957, the licensing agency organized an Operator Advisory Committee to facilitate communication between operators and the licensing agency. Over the years, this committee served its purpose very well. Communication lead to early solutions to problems before they became serious. It created an atmosphere of concern and working together toward the overall growth and development of the Program. It is significant that 18 years after Minnesota recognized the value of such an operator committee, the Federal government made it a requirement in the Act for all States.

Part 1. The federal rules at 45 C.F.R. § 1369.14(a), state that an election must be conducted biennially. This requirement is met by providing an annual election with half the committee standing for election each year.

Part 2. Subparts a. and b. The federal rules at 45 C.F.R. § 1369.14(a), require that the committee shall be fully representative of all blind vendors in the state program on the basis of such factors as geography and vending facility type with the goal of providing for proportional representation of blind vendors on federal property and blind vendors on other property.

The vending facilities in this Program are divided into six regions of the State. There are approximately an equal number of facilities in each district. All are rather similar in "type". The requirement that one representative from each of these districts be elected to the committee will provide for state-wide, fully representative representation on the committee. The provision for two "at-large" representatives will allow for participation by types of vendors, e.g. vendors on federal property, who might not be represented through the geographic representation.

Subpart c. The limit of two successive terms is intended to give more operators a chance to become members of this committee. The more that all operators know about the total operation of the Program, the better they can put their personal problems into perspective.

Subpart d. It is necessary and reasonable that the committee elect its own officers and chairman so that the committee will be self governing. The chairman is allowed to appoint sub-committees as necessary to accomplish the committee's tasks.

Subpart e. The full committee must meet at least twice a year. This requirement is necessary to assure that the committee remains actively involved in the operation of the Program. Notice of meetings can be made by either the licensing agency or the chairman of the committee.

Subpart f. The committee will draft by-laws to deal with the operation of the committee. This is necessary and reasonable to assure the orderly and effective operation of the committee.

Part 3. Subpart a. through Subpart e. The Operator Management Committee's purpose and function is found at 45 C.F.R. § 1369.14(b)(1) through (5), and they are specified in this rule in order to comply with federal law.

Section I. (This section replaces old Section G.) Review of agency decisions.

It is required under 20 U.S.C. § 107b(6) and it is reasonable and necessary to state in this rule, that the stand operator shall have the right to request an administrative review or a fair hearing, if dissatisfied with any action related to the operation or administration of the vending stand program. It is also reasonable and necessary to give the operators notice of the review rights at the time of initial licensure.

Part 1. State law, Minn. Stat. § 248.07 subd. 15 (1980), offers the option of an administrative review to the recipient of rehabilitation services of this agency. The vending stand program is one of these services. An administrative review is also an efficient way for the recipient to informally review and resolve problems without having to go through the more formal steps of a "fair hearing" procedure. The following steps in processing an administrative review are simple and brief, but are necessary and reasonable:

Subpart a. The request must be in writing and within 15 working days of the occurrence of the action. Fifteen working days is a reasonable period of time to react to any occurrence with which an operator is dissatisfied. It is necessary that there be a time limit so that all the evidence related to the occurrence is still fresh. It is also reasonable and necessary to require that the review be made by agency administrative staff who were not involved in the action under review, in order to assure impartiality.

Subpart b. It is necessary that the review be held at a time and place that is convenient to both the operator and the agency. It is also necessary to indicate that the review must be held within a set time limit and 30 working days is reasonable. It allows sufficient time for scheduling and preparation, yet does not unduly delay consideration and resolution.

Subpart c. It is necessary that a written record be made of the administrative review, particularly if further action or a "fair hearing" is later requested by the operator.

Subpart d. It is necessary and reasonable to inform the operator that if an informal administrative review does not resolve the dispute, the operator has a right to a "fair hearing".

Part 2. Both state law, Minn. Stat. § 248.07 subd. 15 (1980), and federal law, 20 U.S.C. § 107d-1, require that the operator be afforded an opportunity for a fair hearing if dissatisfied with any action arising from the operation or administration of the Program. The rule states that the fair hearing will be conducted by the State Office of Administrative Hearings.

Subpart a. It is necessary to indicate a time limit for the filing for a fair hearing and 15 working days after the occurrence of the action or after an adverse decision from an administrative review is reasonable for the reasons stated in Section I., Part 1., Subpart a., above.

Subpart b. It is necessary and reasonable that the request for a fair hearing be made in writing and, to assure delivery or receipt of the request, that it be personally delivered or mailed by certified mail to the administrator of the licensing agency. It is also necessary and reasonable that the request for a fair hearing state in detail the reasons for the request, so that the agency might prepare its evidence for the hearing.

Subpart c. Upon receipt of the request for a fair hearing, the licensing agency must promptly request a hearing date from the State Office of Administrative Hearings and establish a time and place convenient to the operator. The operator will then be notified and given a copy of the hearing procedures and rules. This provision is necessary so that the operator can adequately and properly prepare and present his/her case at the hearing.

Subpart d. After the hearing, the hearing examiner will issue a recommendation. The Commissioner or State Administrator will then issue a proposed decision which will include a statement that the decision is final 15 days after date of issuance unless, before that time, the operator requests a review by a three-person appeal committee according to Minn. Stat. § 248.07 subd. 15(3) (1980). The 15 days is a reasonable time limit to request the three-person appeal. This three-person appeal is necessary because of State law and this is a reasonable place to insert such an appeal in the whole appeal process.

Part 3. The federal rules at 45 C.F.R. § 1369.13 states that if an operator is dissatisfied with the decision rendered after a full evidentiary hearing, the operator may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education. It is necessary and reasonable to inform the operator of the right to request an arbitration panel and to give the reference to the federal regulations.

Section J. Access to program and financial information.

20 U.S.C. § 107b-1(1) requires that the licensing agency provide each operator access to all program and financial data. It is reasonable for this rule to communicate this information to all stand operators.

Dated: June 15, 1981

Arthur E. Noot
Commissioner of Public Welfare

N. Granting process. Once the application for a grant has been approved, the commissioner shall notify the grantee of the approval, and any conditions shall be specified. A grant contract shall be signed by the commissioner or the assistant commissioner and the authorized local agency representative. The grant contract shall specify that report requirements and other grant requirements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of thirty day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by the department. Grantees shall be required to project the next month's cash needs on the previous month's expenditure report.

O. Fiscal responsibility. No funds shall be released to a grantee receiving financial assistance under this rule until it has submitted to the assistant commissioner a statement certifying that the grantee:

1. Has an established accounting system with internal controls adequate to safeguard its assets;

2. Has operating efficiency and reliable accounting data;

3. Promotes operating efficiency and encourages compliance with prescribed management policies; and

4. Has additional fiscal responsibility and accounting requirements the assistant commissioner may require consistent with these rules. The statement may be furnished by a certified public accountant, a duly licensed public accountant, or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency.

P. Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability to any person or circumstance shall not be affected.

Q. Variances. Variances may be granted in the following situations.

1. The commissioner may grant a variance to this rule upon the request of the grantor where it appears that:

a. Changes have occurred which require revised standards and procedures to be specified by the grantor;

b. The rationale for the rule in question can be met or exceeded by the specific alternatives which the grantor proposes to substitute;

c. Granting of the variance would not adversely affect the public health or safety; and

d. Granting of the variance would not conflict with standards imposed by law.

2. The commissioner shall, within 30 days after receipt of a request for a variance, notify the grantor in writing of the granting or denial of the variance and the reasons therefore. A variance may be conditioned on alternative practices proposed by the grantor or imposed by the commissioner.

3. Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance.

# Department of Public Welfare
# Social Services Division

## Proposed Amendment of Rules Governing All Vending Stands and Business Enterprises of the Services for the Blind (12 MCAR § 2.079)

### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Public Welfare proposes to amend the above-entitled rule without a public hearing. The commissioner has determined that the proposed amendment of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subds. 4h (1980).

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Persons interested in this rule shall have 30 days to submit comments on the proposed rule. The proposed rule may modified if the modifications are supported by the data and views submitted to the agency and do not result in a substa change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comm period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to provisions of Minn. Stat. § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request

Ralph Rolland, Director
Business Enterprises Program for the Blind
1745 University Avenue
St. Paul, Minnesota 55104
(612) 296-6043

Authority for the adoption of this rule is contained in Minn. Stat. § 248.07. Additionally, a Statement of Need Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data information relied upon to support the proposed rule has been prepared and is available upon request from Ralph Roll Director, Business Enterprises Program for the Blind, 1745 University Avenue, St. Paul, Minnesota.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the Statement of Need Reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney Genera review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submissi this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should sub written statement of such request to Ralph Rolland, Director, Business Enterprises Program for the Blind, 1745 Unive Avenue, St. Paul, Minnesota.

This rule governs the operation and management of the Business Enterprises Program for the Blind, and provides a mea communication and guidance with all vending stand operators. The major sections of this rule cover the following:

A. The selection process for blind persons entering the program, and conditions of their license to operate an enterprise. the conditions when a license may be terminated;

B. The policies governing the duties, supervision, transfer, and participation of vending stand operators;

C. The duties and responsibilities of the state licensing agency;

D. The provision that funds will be set aside from the operation of each vending stand and that these funds will be use the purchase and repair of equipment, and other purposes as specified in State law;

E. The provision for the vending stand operator to file an informal or a formal appeal if dissatisfied with any decision c state licensing agency.

The major proposed amendments in this rule cover the following:

A. The whole rule has been amended so as to provide better clarity and communication between the state licensing ag and the vending stand operator;

B. To further facilitate communication, a section has been added regarding the election, organization and function operator management committee. This committee is mandated by the federal act and will participate with the state lice agency in major policy decisions;

C. The section on appeals or fair hearings has been rewritten to clarify the process, and the rights of a vending stand ope to appeal any agency decision;

D. The section on the set aside of funds was changed to conform to the Federal Act that the formula be based upon proceeds," as defined in this rule;

E. A section was added that each vending stand operator shall be provided access to all program and financial data rel to the operation of the vending stand program.

These proposed amendments to 12 MCAR § 2.079 (DPW 79) are written so as to conform to the requirements of the Fe requirements contained in the Randolph-Sheppard Act (20 U.S.C. §§ 107-107) and 45 C.F.R., Part 1369 (1979).

Copies of this notice and the proposed rule are available and may be obtained by contacting Ralph Rolland, Dir Business Enterprises Program for the Blind, 1745 University Avenue, St. Paul, Minnesota.

The implementation of the amendments to this rule will not result in any increased spending for local public bodies for the next two years.

June 22, 1981

Arthur E. Noot
Commissioner of Public Welfare

## Amendments as Proposed

**12 MCAR § 2.079 Rules Governing All Vending Stands and Business Enterprises of the Services for the Blind.**

A. Legal authority and scope of rules. Pursuant to Minn. Stat.~~,~~ ~~1953, Sec. 15.06, and Sec. 248.07 as amended by laws of 1955, Chapt. 303,~~ §§ 15.0412, subd. 3, and 248.07, subd. 11 (1980), the following rules are hereby issued by the Commissioner of Public Welfare to govern all vending stands and business enterprises established by the Services for the Blind, Department of Public Welfare, for which the Department of Public Welfare is responsible. Licenses to blind persons will be issued in accordance with these rules and applicable statutes by the commissioner or his designee, hereinafter to be known as the licensing agency.

B. Issuance and conditions of licenses.

1. Selection of stand operators. The selection of stand operators will be made on an objective basis, including a thorough evaluation of the following: ~~character, personality,~~ experience, training, former vocations, education, ~~and health,~~ and other factors that relate to job requirements. Preference will be given to blind persons who are in need of employment. The following specific requirements will also be adhered to: Blind persons selected as operators will:

a. ~~(a)~~ be determined, ~~blind in accordance with the definition of blindness contained in the federal regulations issued pursuant to the Randolph-Sheppard Act;~~ after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, to have (1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its evident diameter subtends an angle of no greater than 20°.

b. ~~(b)~~ be citizens of the United States,

~~(c) be at least 21 years of age;~~

c. ~~(d)~~ be certified as qualified for the operation of a vending stand by the rehabilitation staff of the Services for the Blind, Department of Public Welfare~~;~~ . ~~and~~

~~(e) have one year's residence in the State of Minnesota.~~

2. License period and license termination.

a. Each license will be issued for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

1. failure to operate in accordance with this rule, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property; ~~In addition to the above, a license may be terminated, or an operator may be removed or suspended, for dishonesty, for repeated failure to work the hours designated, for inefficiency in operation of the stand, for use of alcoholic beverages during stand hours, for unsatisfactory personal habits, for failure to cooperate with the licensing agency, or for failure to comply with his agreement with the licensing agency or with this rule.~~

2. improvement of vision so that the operator no longer meets the definition of blindness as stated in part B.1.a. of this rule;

3. extended illness with medically documented diagnosis of prolonged incapacity of the operator to operate the vending stand in a manner consistent with the needs of the location or other available locations in the program;

4. withdrawal of the operator from the program upon the operator's written notification to the licensing agency.

b. The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose license is proposed to be revoked. This notification shall state the grounds for such action and shall inform the operator of the

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right to appeal the action. The operator will be afforded an opportunity for a fair hearing before termination of the license described in Section ~~G.~~ I. of this rule.

~~3. Income from vending machines within reasonable proximity to, and direction competition with, the vendi stand will be assigned to that vending stand.~~

3. Operator agreements.

a. Each licensed operator will sign an agreement for the operation of an assigned vending stand, and will sign a ne agreement each time the operator moves or transfers to another vending stand.

b. The operator's agreement to operate a vending stand may be revoked or temporarily suspended in those instance where the operation, integrity, or reputation of the program may be damaged. The licensing agency shall promptly notify b certified mail or personal service any vending stand operator whose agreement is suspended or revoked. The notification sha state the grounds for such action and shall inform the operator of the right to appeal the action, as described in Section I of thi rule. The action to suspend or revoke an agreement does not automatically mean the termination of the operator's licens Notice of intent to terminate the operator's license shall require a separate notice, as described in part B.2.b. of this rule.

C. Furnishing equipment and initial stocks. The licensing agency is responsible:

1. For furnishing each vending stand or business enterprise with adequate, suitable equipment and maintenance, ~~and~~ repair, and replacement of such equipment.

2. For furnishing each vending stand or business enterprise with adequate initial stocks of merchandise and supplie Subsequent purchase of merchandise shall be made by the operator out of current receipts. Merchandise shall be replaced a sold, maintaining the inventory at the minimum of the original inventory.

D. Right to, title to, and interest in the vending stand equipment and stocks.

The right to, title to, and interest in the vending stand equipment used in the program is vested in the State of Minnesot Operators will be required to acquire ownership of merchandise and supplies through reimbursing the licensing agency for suc expenditures, by monthly payments extended over a three-year period. Upon approval of the licensing agency additional tim may be granted in hardship cases, the purpose of which is to assure that no individual be denied the opportunity to become a operator because of ~~his~~ the operator's inability to purchase the initial stock. Upon termination of the operator's license, th licensing agency will purchase, at the prevailing wholesale price, all saleable merchandise and, at an amortized price, a supplies remaining in the stand, assuming there is no delinquency in the operator's accounts with the licensing agency. N fixtures or equipment shall be added, altered, or removed from the stand except at the direction of the licensing agency. Th operator will exercise all possible care in the use of fixtures and equipment, making no alterations, changes, or additions.

E. Funds set aside from vending stand proceeds.

1. The licensing agency will set aside or cause to be set aside from the month net ~~profits~~ proceeds of the operation c vending stands the following amounts:

a. ~~1.~~ on the 1st $100 or portion thereof, ~~4%~~ 2%

b. ~~2.~~ on the 2nd $100 or portion thereof, ~~6%~~ 4%

c. ~~3.~~ on the 3rd $100 or portion thereof, ~~8%~~ 6%

d. ~~4.~~ on the 4th $100 or portion thereof, ~~10%~~ 8%

e. ~~5.~~ on the 5th $100 or portion thereof, ~~12%~~ 10%

f. ~~6.~~ on the 6th $100 or portion thereof, ~~14%~~ 12%

g. ~~7.~~ on the 7th $100 or portion thereof, ~~16%~~ 14%

~~8. on the 8th $100 or portion thereof, 18%~~

~~9. on the 9th $100 or portion thereof,~~ and any amounts over ~~$1000,~~ $700 ~~20%~~ 16%

~~1. "Net profits",~~ "Net proceeds," as used herein, means the monthly cash receipts including any vending machine c other income, less merchandise purchases, general expenses, and pay roll~~, and, for accounting purposes only, the previou month's set aside charge~~ (excluding set-aside charges).

2. This rate supersedes any previous rate heretofore established by any agreements or policies of the licensing agency The operator shall pay these set-aside funds monthly to the licensing agency. These set-aside funds shall be used only to th extent necessary and may be used for the sole purpose of:

a. maintenance and replacement of equipment;

b. the purchase of new equipment; and

c. the management services that are specified in state law.

~~2. Adequate records will be maintained to support the reasonableness of the amount set aside for the purposes listed above. In no case will the amount set aside exceed the amount determined by the Director of the Federal Office of Vocational Rehabilitation, Department of Health, Education, and Welfare, to be reasonable. The set aside rates will be re-evaluated periodically and adjusted by amendment to this rule when necessary.~~

3. The Operator Management Committee, as defined in part H.3. of this rule, will participate with the licensing agency in the establishment of a set-aside schedule covering each of the purposes for which the set-aside funds are intended to be used, and will be reviewed annually to determine the need for change based upon the previous year's expenditures. The schedule shall be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required, with the allowances for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis. Changes, when necessary, shall be by amendment to this rule.

F. Distribution and use of income from vending machines on federal property.

1. Vending machine income from vending machines on federal property which has been disbursed to the licensing agency by a property managing department, agency, or instrumentality of the United States shall accrue to each blind operator operating a vending stand on such federal property in an amount not to exceed the average net income of the total number of blind operators within the state program, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind operator in any amount exceeding the average net income of the total number of blind operators in the United States.

2. No blind operator shall receive less vending machine income than the operator was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

3. No limitation shall be imposed on income from vending machines combined to create a vending stand when such stand is maintained, serviced, or operated by a blind operator. The licensing agency will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amounts eligible to accrue to blind operators.

4. The licensing agency will disburse vending machine income to blind operators on at least a quarterly basis.

5. Vending machine income retained by the licensing agency will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been furnished information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; or management services. Any set-aside charged to blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

G. ~~F.~~ Policies governing the duties, supervision, transfer, and participation of operators.

1. Each operator shall be entitled to the net ~~profit~~ proceeds of the operation of the vending stand he/she operates, less the amount set-aside by the licensing agency. ~~Each operator prior to the effective date of this Rule shall sign a new agreement with the licensing agency consistent with this Rule.~~

2. ~~1.~~ Each operator shall agree to:

a. perform faithfully and to the best of ~~his~~ the operator's ability the necessary duties in connection with the operation of a vending stand in accordance with the licensing agency's rules, the terms of the licensing agency's permit to operate in the building or property, and the agreement with the operator;

b. cooperate with official and duly authorized representatives of the licensing agency in connection with their official program responsibilites;

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c. operate the vending stand in accordance with all applicable health laws and regulations;

d. furnish monthly reports to the licensing agency by the tenth of the following month, listing daily sales, other income, purchases, other expenditures, and personal withdrawals, and attaching all invoices properly receipted. Inventory of merchandise will be included when requested;

e. make all purchases of merchandise on a strictly cash basis unless exception is permitted in writing by the licensing agency; and

f. make no credit sales.

3. ~~2.~~ The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance and training as may be necessary to insure the operation of each vending stand in the most productive and efficient manner possible. This supervision, assistance and training must be performed in accordance with the following policies in addition to other provisions of this rule.

a. In ~~the granting of licenses~~ entering agreements for new or vacated stands, preference on the basis of seniority of experience of operating stands under the control of the licensing agency shall be given to capable operators who are deemed competent to handle the enterprise under consideration. The application of such preference will not prohibit the licensing agency from selecting an operator from the community in which the stand is located. Seniority shall be determined on the basis of continuous service in the stand program while under contract with the licensing agency. In the case of broken service, previous service shall be considered only when termination was due to no fault of the operator. Termination for medical reasons may be considered as a leave of absence when so requested by the operator and approved by the licensing agency at the time of termination.

b. When it has been determined that a relief operator or an assistant or assistants must be employed, the licensing agency shall first make attempts to locate a handicapped individual before approving the employment of a non-handicapped person. The wages paid for any help, including bookkeeping, must be in reasonable proportion to work performed and must be approved by the licensing agency.

c. The licensing agency shall approve the items and the selling prices at which those items may be sold, which comprise the merchandise inventory at each vending stand.

d. The operator must obtain the approval of the licensing agency before changing vendors with whom ~~he~~ the operator does business in connection with the vending stand.

e. The operator will purchase liability insurance for the vending stand. The agency will purchase liability insurance for a vending stand only when, in the opinion of the licensing agency, it is deemed essential that the agency purchase this insurance. ~~be provided.~~

H. Election, organization, and functions of the Operator Management Committe.

1. The licensing agency and the elections sub-committee of the Operator Management Committee will conduct an annual election for representatives to the Operator Management Committee.

2. The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

a. Nominations will be solicited in each district for that district and state-wide for at-large representatives.

b. Elections will be by licensed operators in each district for their district and state-wide for at-large representatives.

c. Each term will be two years, with a limit of two successive terms.

d. The committee shall elect its own chairman and other officers. The chairman shall appoint sub-committees as necessary.

e. The full committee will meet a minimum of twice a year. Meetings may be called by notice of either the licensing agency or the chairman of the committee. Sub-committees will meet as necessary to carry on their functions.

f. The committee shall establish by-laws for the further rules, functioning and guidance of the committee.

3. The Operator Management Committee's purpose and function is to:

a. Participate with the licensing agency in major administrative decisions and policy and program development;

b. Receive grievances of vending stand operators and serve as their advocates;

c. Participate with the licensing agency in the administration of the transfer and promotion system for vending stand operators;

d. Participate with the licensing agency in developing training and retraining programs; and

e. Sponsor, with the assistance of the licensing agency, meetings and instructional conferences for vending stand operators.

~~G. Opportunity for a Fair Hearing for Operators: An opportunity for a fair hearing will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program.~~

~~1. The following standards and procedures will be followed in granting an operator a fair hearing.~~

~~a. An operator shall have the right to be represented at the hearing by counsel or by a friend.~~

~~b. The hearing shall be held within a reasonable time after the written request therefore and at a time and place reasonably convenient to the operator.~~

~~c. The operator shall have an adequate opportunity to present his case and for cross-examination.~~

~~d. The application for a hearing shall be made to the Commissioner. The hearing shall be held in accordance with the law as prescribed in Laws of 1957, Chap. 806, Sec. 8 through Sec. 14.~~

~~e. The decision shall be based upon the information adduced at the hearing. The verbatim transcript of the testimony and the exhibits, or an official report containing the substance of what took place at the hearing together with all papers and reports filed in the proceedings, and recommendations of the hearing official shall constitute the exclusive record for decision and shall be available to the operator.~~

~~f. The decision shall be in writing and shall set forth the issue, the relevant facts brought out at the hearing, the pertinent provisions in law and agency policy, and the reasoning that led to the decision. The operator shall be forwarded a copy of the decision immediately upon its issuance.~~

~~g. The decision shall constitute the official action of the state licensing agency in relation to the action that was the subject of the hearing.~~

I. Review of agency decisions. Operators shall be informed in writing at the time they are licensed, of their right to and the procedures to be followed in obtaining an administrative review or a fair hearing regarding an agency decision.

1. An opportunity for an informal administrative review will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators an informal administrative review:

a. An operator or the operator's designee (who need not be an attorney) may request in writing, within 15 working days of the occurrence of the action, administrative review of the licensing agency action. This review will be made only by a member of members of the administrative staff of the agency who have not in any way participated in the agency action in question.

b. The administrative review will be held during regular agency working hours, at a district or local office location. An administrative review will be conducted within 30 working days of receipt by the licensing agency of such a written request.

c. Documentation as to written requests for administrative review and actions and decisions resulting therefrom shall be maintained as part of the official record of the administrative review process.

d. When an informal administrative review does not resolve a dispute to the satisfaction of a blind operator, the blind operator may request that the licensing agency provide a fair hearing.

2. An opportunity for a fair hearing conducted pursuant to Minn. Stat. §§ 15.0418-15.0422 will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators a fair hearing.

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a. If an operator requests a fair hearing, such a request must be made either within 15 working days after an adverse decision based on an administrative review or, in the absence of an administrative review, within 15 working days of the occurrence of the action with which the operator is dissatisfied.

b. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the administrator of the licensing agency personally or by certified mail, return receipt requested. The request must specify the action being appealed and state in detail the basis for the appeal.

c. The hearing shall be held at a time and place convenient and accessible to the operator requesting a fair hearing. A hearing held during regular agency working hours and located at the state agency central office will be deemed among the convenient times and places. Upon receipt of the request, the licensing agency shall immediately request a hearing date from the state Office of Administrative Hearings, and then notify the operator of the time and place for the hearing. The operator shall be provided a copy of the hearing procedures and rules.

d. After receipt of the report of the hearing examiner the state administrator (or, in the case of license revocation, the Commissioner of Public Welfare) shall issue a proposed decision. The proposed decision shall state that the decision shall become final 15 days after its issuance unless, before that date, the operator requests a review by a three-person appeal committee according to Minn. Stat. § 248.07, subd. 15(3). The appeal committee's recommendation will be made to the administrator of the licensing agency or the Commissioner who shall issue a final decision modifying or affirming the proposed decision.

3. If an operator is dissatisfied with the decision rendered after a full evidentiary hearing, the operator may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, as authorized by federal regulations at 45 C.F.R. § 1369.13 (1979).

J. Access to program and financial information. Each operator shall be provided access to all program and financial data of the licensing agency relevant to the operation of the vending stand program, including quarterly and annual financial reports. Insofar as is practicable such data shall be made available in braille or recorded tape. At the request of an operator, the licensing agency will arrange a convenient time to assist in the interpretation of such data.

K. ~~H.~~ Explanation to operator of the operator's responsibilities and privileges. The licensing agency rules, the agreement with the operator, and any applicable regulations of the authority having charge of the property on which the vending stand or business enterprise is located shall be read and explained to each operator. A copy of the agreement and this rule will be furnished to each operator. ~~I.~~ The ~~new~~ agreement between the licensing agency and the operator, consistent with the provisions of this rule and signed by the operator, will be the operator's attestation that the agreement and this rule have been read to the operator and that the operator agrees to abide by them.

Department of Public Welfare

Services for the Blind

Rules to Govern All Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079 (DPW 79)

A. Legal authority and scope of rules.

Pursuant to Minn. Stat. ~~, 1953, Sec. 15.06, and Sec. 248.07 as amended by laws of 1955, Chapt. 303,~~ §§ 15.0412, subd. 3, and 248.07, subd. 11 (1980), the following rules are hereby issued by the Commissioner of Public Welfare to govern all vending stands and business enterprises established by the Services for the Blind, Department of Public Welfare, for which the Department of Public Welfare is responsible. Licenses to blind persons will be issued in accordance with these rules and applicable statutes by the commissioner or his designee, hereinafter to be known as the licensing agency.

B. Issuance and conditions of licenses.

1. Selection of stand operators.

The selection of stand operators will be made on an objective basis, including a thorough evaluation of the following: ~~character, personality,~~ experience, training, former vocations, education, ~~and health,~~ and other factors that relate to job requirements. Preference will be given to blind persons who are in need of employment. The following specific requirements will also be adhered to:

Blind persons selected as operators will

~~(a)~~ a. be determined, ~~blind in accordance with the definition of blindness contained in the federal regulations issued pursuant to the Randolph-Sheppard Act:~~ after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such

person shall select, to have (1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its evident diameter subtends an angle of no greater than $20^{o}$,

~~(b)~~ b. be citizens of the United States,

~~(c) be at least 21 years of age;~~

~~(d)~~ c. be certified as qualified for the operation of a vending stand by the rehabilitation staff of the Services for the Blind, Department of Public Welfare; . ~~and~~

~~(e) have one year's residence in the State of Minnesota.~~

2. License period and license termination.

a. Each license will be issued for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

1. failure to operate in accordance with this rule, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property; ~~In addition to the above, a license may be terminated, or an operator may be removed or suspended, for dishonesty, for repeated failure to work the hours designated, for inefficiency in operation of the stand, for use of alcoholic beverages during stand hours, for unsatisfactory personal habits, for failure to cooperate with the licensing agency, or for failure to comply with his agreement with the licensing agency or with this rule.~~

2. improvement of vision so that the operator no longer meets the definition of blindness as stated in part B.1.a. of this rule;

3. extended illness with medically documented diagnosis of prolonged incapacity of the operator to operate the vending stand in a manner consistent with the needs of the location or other available locations in the program;

4. withdrawal of the operator from the program upon the operator's written notification to the licensing agency.

b. The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose license is proposed to be revoked. This notification shall state the grounds for such action and shall inform the operator of the right to appeal the action. The operator will be afforded an opportunity for a fair hearing before termination of the license as described in Section -G- I of this rule.

~~3. Income from vending machines within reasonable proximity to, and direction competition with, the vending stand will be assigned to that vending stand.~~

3. Operator agreements.

a. Each licensed operator will sign an agreement for the operation of an assigned vending stand, and will sign a new agreement each time the operator moves or transfers to another vending stand.

b. The operator's agreement to operate a vending stand may be revoked or temporarily suspended in those instances where the operation, integrity, or reputation of the program may be damaged. The licensing agency shall promptly notify by certified

mail or personal service any vending stand operator whose agreement is suspended or revoked. The notification shall state the grounds for such action and shall inform the operator of the right to appeal the action, as described in Section I of this rule. The action to suspend or revoke an agreement does not automatically mean the termination of the operator's license. Notice of intent to terminate the operator's license shall require a separate notice, as described in part B.2.b. of this rule.

C. Furnishing equipment and initial stocks.

The licensing agency is responsible:

1. For furnishing each vending stand or business enterprise with adequate, suitable equipment and maintenance, ~~and~~ repair, and replacement of such equipment.
2. For furnishing each vending stand or business enterprise with adequate initial stocks of merchandise and supplies. Subsequent purchase of merchandise shall be made by the operator out of current receipts. Merchandise shall be replaced as sold, maintaining the inventory at the minimum of the original inventory.

D. Right to, title to, and interest in the vending stand equipment and stocks.

The right to, title to, and interest in the vending stand equipment used in the program is vested in the State of Minnesota. Operators will be required to acquire ownership of merchandise and supplies through reimbursing the licensing agency for such expenditures, by monthly payments extended over a three-year period. Upon approval of the licensing agency additional time may be granted in hardship cases, the purpose of which is to assure that no individual be denied the opporunity

to become an operator because of ~~his~~ the operator's inability to purchase the initial stock. Upon termination of the operator's license, the licensing agency will purchase, at the prevailing wholesale price, all saleable merchandise and, at an amortized price, all supplies remaining in the stand, assuming there is no delinquency in the operator's accounts with the licensing agency. No fixtures or equipment shall be added, altered, or removed from the stand except at the direction of the licensing agency. The operator will exercise all possible care in the use of fixtures and equipment, making no alterations, changes, or additions.

E. Funds set aside from vending stand proceeds.

1. The licensing agency will set aside or cause to be set aside from the month net ~~profits~~ proceeds of the operation of vending stands the following amounts:

| | | | |
|---|---|---|---|
| ~~1.~~ | a. on the 1st $100 or portion thereof, | ~~4%~~ | 2% |
| ~~2.~~ | b. on the 2nd $100 or portion thereof, | ~~6%~~ | 4% |
| ~~3.~~ | c. on the 3rd $100 or portion thereof, | ~~8%~~ | 6% |
| ~~4.~~ | d. on the 4th $100 or portion thereof, | ~~10%~~ | 8% |
| ~~5.~~ | e. on the 5th $100 or portion thereof, | ~~12%~~ | 10% |
| ~~6.~~ | f. on the 6th $100 or portion thereof, | ~~14%~~ | 12% |
| ~~7.~~ | g. on the 7th $100 or portion thereof, | ~~16%~~ | 14% |
| ~~8.~~ | ~~on the 8th $100 or portion thereof,~~ | ~~18%~~ | |
| ~~9.~~ | ~~on the 9th $100 or portion thereof,~~ and any amounts over ~~$1000,~~ $700 | ~~20%~~ | 16% |

~~1.~~ ~~"Net Profits",~~ "Net Proceeds", as used herein, means the monthly cash receipts including any vending machine or other income, less merchandise purchases, general expenses, and pay roll~~, and, for accounting purposes only, the previous month's set-aside charge~~. (excluding set-aside charges).

2. This rate supersedes any previous rate heretofore established by any agreements or policies of the licensing agency. The operator shall pay these set-aside funds monthly to the licensing agency. These set-aside funds shall be used only to the extent necessary and may be used for the sole purpose of:

a. maintenance and replacement of equipment;

b. the purchase of new equipment; and

c. the management services that are specified in state law.

~~2. Adequate records will be maintained to support the reasonableness of the amount set aside for the purposes listed above. In no case will the amount set aside exceed the amount determined by the Director of the Federal Office of Vocational Rehabilitation, Department of Health, Education, and Welfare, to be reasonable. The set aside rates will be re-evaluated periodically and adjusted by amendment to this Rule when necessary.~~

3. The Operator Management Committee, as defined in part H.3. of this rule, will participate with the licensing agency in the establishment of a set-aside schedule covering each of the purposes for which the set-aside funds are intended to be used, and will be reviewed annually to determine the need for change based upon the previous year's expenditures. The schedule shall be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required, with the allowances for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis. Changes, when necessary, shall be by amendment to this rule.

F. Distribution and use of income from vending machines on federal property.

1. Vending machine income from vending machines on federal property which has been disbursed to the licensing agency by a property managing department, agency, or instrumentality of the United States shall accrue to each blind operator operating a vending stand on such federal property in an amount not to exceed the average net income of the total number of blind operators within the State program, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind operator in any amount exceeding the average net income of the total number of blind operators in the United States.

2. No blind operator shall receive less vending machine income than the operator was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

3. No limitation shall be imposed on income from vending machines combined to create a vending stand when such stand is maintained, serviced, or operated by a blind operator. The licensing agency will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amounts eligible to accrue to blind operators.

4. The licensing agency will disburse vending machine income to blind operators on at least a quarterly basis.

5. Vending machine income retained by the licensing agency will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been furnished information on all matters relevant to such

purposes. Any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; or management services. Any set-aside charged to blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

~~F.~~ G. Policies governing the duties, supervision, transfer, and participation of operators.

1. Each operator shall be entitled to the net ~~profit~~ proceeds of the operation of the vending stand he/she operates, less the amount set-aside by the licensing agency. ~~Each operator prior to the effective date of this Rule shall sign a new agreement with the licensing agency consistent with this Rule.~~

~~1.~~ 2. Each operator shall agree to:

a. perform faithfully and to the best of ~~his~~ the operator's ability the necessary duties in connection with the operation of a vending stand in accordance with the licensing agency's rules, the terms of the licensing agency's permit to operate in the building or property, and the agreement with the operator;

b. cooperate with official and duly authorized representatives of the licensing agency in connection with their official program responsibilities;

c. operate the vending stand in accordance with all applicable health laws and regulations;

d. furnish monthly reports to the licensing agency by the tenth of the following month, listing daily sales, other income, purchases, other expenditures, and personal withdrawals, and attaching all

invoices properly receipted. Inventory of merchandise will be included when requested;

e. make all purchases of merchandise on a strictly cash basis unless exception is permitted in writing by the licensing agency; and

f. make no credit sales.

~~2.~~ 3. The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance and training as may be necessary to insure the operation of each vending stand in the most productive and efficient manner possible. This supervision, assistance and training must be performed in accordance with the following policies in addition to other provisions of this rule.

a. In ~~the granting of licenses~~ entering agreements for new or vacated stands, preference on the basis of seniority of experience of operating stands under the control of the licensing agency shall be given to capable operators who are deemed competent to handle the enterprise under consideration. The application of such preference will not prohibit the licensing agency from selecting an operator from the community in which the stand is located. Seniority shall be determined on the basis of continuous service in the stand program while under contract with the licensing agency. In the case of broken service, previous service shall be considered only when termination was due to no fault of the operator. Termination for medical reasons may be considered as a leave of absence when so requested by the operator and approved by the licensing agency at the time of termination.

b. When it has been determined that a relief operator or an assistant or assistants must be employed, the licensing agency shall first make attempts to locate a handicapped individual before approving the employment of a non-handicapped person. The wages paid for any help, including bookkeeping, must be in reasonable proportion to work performed and must be approved by the licensing agency.

c. The licensing agency shall approve the items and the selling prices at which those items may be sold, which comprise the merchandise inventory at each vending stand.

d. The operator must obtain the approval of the licensing agency before changing vendors with whom ~~he~~ the operator does business in connection with the vending stand.

e. The operator will purchase liability insurance for the vending stand. The agency will purchase liability insurance for a vending stand only when, in the opinion of the licensing agency, it is deemed essential that the agency purchase this insurance. ~~be provided.~~

H. Election, organization, and functions of the Operator Management Committee.

1. The licensing agency and the elections sub-committee of the Operator Management Committee will conduct an annual election for representatives to the Operator Management Committee.

2. The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

a. Nominations will be solicited in each district for that district and state-wide for at-large representatives.

b. Elections will be by licensed operators in each district for their district and state-wide for at-large representatives.

c. Each term will be two years, with a limit of two successive terms.

d. The committee shall elect its own chairman and other officers. The chairman shall appoint sub-committees as necessary.

e. The full committee will meet a minimum of twice a year. Meetings may be called by notice of either the licensing agency or the chairman of the committee. Sub-committees will meet as necessary to carry on their functions.

f. The committee shall establish by-laws for the further rules, functioning and guidance of the committee.

3. The Operator Management Committee's purpose and function is to:

a. Participate with the licensing agency in major administrative decisions and policy and program development;

b. Receive grievances of vending stand operators and serve as their advocates;

c. Participate with the licensing agency in the administration of the transfer and promotion system for vending stand operators;

d. Participate with the licensing agency in developing training and retraining programs; and

e. Sponsor, with the assistance of the licensing agency, meetings and instructional conferences for vending stand operators.

~~G. Opportunity for a Fair Hearing for Operators:~~

~~An opportunity for a fair hearing will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program.~~

~~1. The following standards and procedures will be followed in granting an operator a fair hearing.~~

~~a. An operator shall have the right to be represented at the hearing by counsel or by a friend.~~

~~b. The hearing shall be held within a reasonable time after the written request therefore and at a time and place reasonably convenient to the operator.~~

~~c. The operator shall have an adequate opportunity to present his case and for cross-examination.~~

~~d. The application for a hearing shall be made to the Commissioner. The hearing shall be held in accordance with the law as prescribed in Laws of 1957, Chap. 806, Sec. 8 through Sec. 14.~~

~~e. The decision shall be based upon the information adduced at the hearing. The verbatim transcript of the testimony and the exhibits, or an official report containing the substance of what took place at the hearing together with all papers and reports filed in the proceedings, and recommendations of the hearing official shall constitute the exclusive record for decision and shall be available to the operator.~~

~~f. The decision shall be in writing and shall set forth the issue, the relevant facts brought out at the hearing, the pertinent provisions in law and agency policy, and the reasoning that led to the decision. The operator shall be forwarded a copy of the decision immediately upon its issuance.~~

~~g. The decision shall constitute the official action of the state licensing agency in relation to the action that was the subject of the hearing.~~

I. Review of agency decisions.

Operators shall be informed in writing at the time they are licensed, of their right to and the procedures to be followed in obtaining an administrative review or a fair hearing regarding an agency decision.

1. An opportunity for an informal administrative review will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators an informal administrative review:

   a. An operator or the operator's designee (who need not be an attorney) may request in writing, within 15 working days of the occurrence of the action, administrative review of the licensing agency action. This review will be made only by a member or members of the administrative staff of the agency who have not in any way participated in the agency action in question.

   b. The administrative review will be held during regular agency working hours, at a district or local office location. An administrative review will be conducted within 30 working days of receipt by the licensing agency of such a written request.

   c. Documentation as to written requests for administrative review and actions and decisions resulting therefrom shall be maintained as part of the official record of the administrative review process.

   d. When an informal administrative review does not resolve a dispute to the satisfaction of a blind operator, the blind operator may request that the licensing agency provide a fair hearing.

2. An opportunity for a fair hearing conducted pursuant to Minn. Stat. § 15.0418 - 15.0422 will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following

procedures will be followed in granting operators a fair hearing.

a. If an operator requests a fair hearing, such a request must be made either within 15 working days after an adverse decision based on an administrative review or, in the absence of an administrative review, within 15 working days of the occurrence of the action with which the operator is dissatisfied.

b. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the administrator of the licensing agency personally or by certified mail, return receipt requested. The request must specify the action being appealed and state in detail the basis for the appeal.

c. The hearing shall be held at a time and place convenient and accessible to the operator requesting a fair hearing. A hearing held during regular agency working hours and located at the state agency central office will be deemed among the convenient times and places. Upon receipt of the request, the licensing agency shall immediately request a hearing date from the state Office of Administrative Hearings, and then notify the operator of the time and place for the hearing. The operator shall be provided a copy of the hearing procedures and rules.

d. After receipt of the report of the hearing examiner the state administrator (or, in the case of license revocation, the Commissioner of Public Welfare) shall issue a proposed decision. The proposed decision shall state that the decision shall become final 15 days after its issuance unless, before that

date, the operator requests a review by a three-person appeal committee according to Minn. Stat. § 248.07, subd. 15(3). The appeal committee's recommendation will be made to the administrator of the licensing agency or the Commissioner who shall issue a final decision modifying or affirming the proposed decision.

3. If an operator is dissatisfied with the decision rendered after a full evidentiary hearing, the operator may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, as authorized by federal regulations at 45 C.F.R. § 1369.13 (1979).

J. Access to program and financial information.

Each operator shall be provided access to all program and financial data of the licensing agency relevant to the operation of the vending stand program, including quarterly and annual financial reports. Insofar as is practicable such data shall be made available in braille or recorded tape. At the request of an operator, the licensing agency will arrange a convenient time to assist in the interpretation of such data.

~~H.~~ K. Explanation to operator of the operator's responsibilities and privileges. The licensing agency rules, the agreement with the operator, and any applicable regulations of the authority having charge of the property on which the vending stand or business enterprise is located shall be read and explained to each operator. A copy of the agreement and this rule will be furnished to each operator. ~~I.~~ The new agreement between the licensing agency and the operator, consistent with the provisions of this rule and signed by the operator, will be the operator's attestation that the agreement and this rule have been read to the

operator and that the operator agrees to abide by them.

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Page 1, before "A" insert the appropriate rule number and headnote

Page 1, line 8, strike "(1980)"

Page 1, line 22, strike the colon and insert an underlined period

Page 1, line 23, insert the colon that appeared in the State Register

Page 1, line 27, before the comma insert a period and strike it

Page 2, line 17, strike "1." and insert "(1)"

Page 3, line 1, strike "2." and insert "(2)"

Page 3, line 4, strike "3." and insert "(3)"

Page 3, line 8, strike "4." and insert "(4)"

Page 3, line 16, insert an underscored period after "I"

Page 4, line 4, insert an underlined period after "I"

Page 5, line 12, strike "month" and insert "monthly"

Page 12, line 25, strike the comma

Page 13, line 10, before "or" insert "~~of~~"

Page 13, line 26, after "Stat." insert "S"

Steven C. Cross
Revisor of Statutes

Name: Paul M. Marinac

Paul M. Marinac
Title: Assistant Revisor

Phone: 296-0948

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_____ The changes requested by the revisor are approved by the agency.

_____ The changes requested by the revisor are not approved by the agency

_____
Agency's Representative

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_____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

_____
Assistant Attorney General

Public Welfare is considering proposed amendments to DPW Rule 28, Community Mental Health Services. This rule governs Community services to the mentally ill, mentally retarded and chemically dependent and the requirements that community mental health board and human services boards must meet to obtain state grant-in-aid funds.

The proposed changes are: (1) establishment of mandatory minimum program requirements and standards; (2) establishment of optional programs and service standards for which state grant-in-aid funds may be used, and (3) conditions for boards receiving waiver of the minimum population requirement.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to: Mr. Alan Mathiason, Community Programs Division, Bureau of Community Services, Minnesota Department of Public Welfare, Centennial Building, St. Paul, Minnesota 55155.

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-6638.

All statements of information and comment must be received by February 15, 1978. Any written material received by the Department shall become part of the hearing record.

# Department of Public Welfare

## Notice of Intent to Solicit Outside Opinion

Notice is hereby given that the Minnesota Department of Public Welfare is considering proposed amendments to DPW Rule 79, Rules to Govern all Vending Stands and Business Enterprises of the Services for the Blind. This Rule governs the operation and management of all business enterprises operated by blind persons under license of the Department of Public Welfare. Legal authority for this program is pursuant to the Federal Randolph Sheppard Act as amended December, 1975 (specifically, paragraph 107 b (5) requiring issuing regulations) and Minn. Stat. § 248.07.

The proposed changes reflect requirements to comply to the amended Randolph Sheppard Act. Changes include:

—Eliminating the 21-years-of-age requirement for blind operators;

—Eliminating the Minnesota residence requirement for blind operators;

—Altering the formula for funds set aside by the Department of Public Welfare in the operation of each enterprise; and

—Rewriting the paragraph on Fair Hearings for blind operators.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Ralph Rolland
Department of Public Welfare
Services for the Blind and Visually Handicapped
1745 University Avenue
St. Paul, Minnesota 55104

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6043.

All statements of information and comment must be received by February 9, 1978. Any written material received by the Department shall become part of the hearing record.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 6, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on July 1, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 12 MCAR 2.079 are adopted this 8th day of September, 1981 pursuant to authority vested in me by Minnesota Statutes section 15.0412.

STATE OF MINNESOTA

COMMISSIONER OF PUBLIC WELFARE

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 22nd day of June, 1981 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Public Welfare for that purpose and be published in the State Register.

STATE OF MINNESOTA

Orth E Levor

Commissioner of Public Welfare

STATE OF MINNESOTA

JUL 09 1981

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Public Welfare proposes to amend the above-entitled rule without a public hearing. The Commissioner has determined that the proposed amendment of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980).

Persons interested in this rule shall have 30 days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Ralph Rolland, Director
Business Enterprises Program for the Blind
1745 University Avenue
St. Paul, Minnesota 55104
(612)296-6043

Authority for the adoption of this rule is contained in Minn. Stat. §248.07. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ralph Rolland, Director, Business Enterprises Program for the Blind, 1745 University Avenue, St. Paul, Minnesota.

Upon adoption of the final rule without a public hearing, the proposed rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Ralph Rolland, Director, Business Enterprises Program for the Blind, 1745 University Avenue, St. Paul, Minnesota.

This rule governs the operation and management of the Business Enterprises Program for the Blind, and provide a means of communication and guidance with all vending stand operators. The major sections of this rule cover the following:

A. The selection process for blind persons entering the Program, and conditions of their license to operate an enterprise, and the conditions when a license may be terminated;

B. The policies governing the duties, supervision, transfer, and participation of vending stand operators;

C. The duties and responsibilities of the State Licensing Agency;

D. The provision that funds will be set aside from the operation of each vending stand and that these funds will be used for the purchase and repair of equipment, and other purposes as specified in State law;

E. The provision for the vending stand operator to file an informal or a formal appeal if dissatisfied with any decision of the State Licensing Agency.

The major proposed amendments in this rule cover the following:

A. The whole rule has been amended so as to provide better clarity and communication between the State Licensing Agency and the vending stand operator;

B. To further facilitate communication, a section has been added regarding the election, organization and function of an Operator Management Committee. This Committee is mandated by the Federal Act and will participate with the State Licensing Agency in major policy decisions;

C. The section on appeals or fair hearings has been rewritten to clarify the process, and the rights of a vending stand operator to appeal any agency decision;

D. The section on the set aside of funds was changed to conform to the Federal Act that the formula be based upon "net proceeds", as defined in this rule;

E. A section was added that each vending stand operator shall be provided access to all Program and financial data relevant to the operation of the vending stand program.

These proposed amendments to 12 MCAR 2.079 (DPW 79) are written so as to conform to the requirements of the Federal requirements contained in the Randolph-Sheppard Act (20 U.S.C. §§107-107) and 45 C.F.R., Part 1369 (1979).

Copies of this Notice and the proposed rule are available and may be obtained by contacting Ralph Rolland, Director, Business Enterprises Program for the Blind, 1745 University Avenue, St. Paul, Minnesota.

The implementation of the amendments to this rule will not result in any increased spending for local public bodies for the next two years.

STATE OF MINNESOTA

July 6, 1981
Date

Ruth E Brown
Commissioner of Public Welfare

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

AFFIDAVIT OF MAILING

STATE OF MINNESOTA )
)ss.
COUNTY OF RAMSEY )

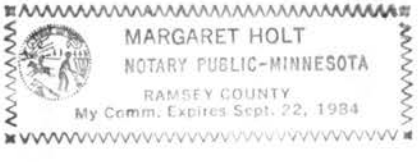
Wendy Johnson, being first duly sworn, deposes and says:

That on the 1st day of July, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State of Minnesota, Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me
this 1st day of July, 1981.

Margaret Holt



STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §15.0412, subd. 4, that their names be placed on file with and maintained by the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 4:00, P.M., this 1st day of July, 1981.



STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

FINDINGS OF FACT AND CONCLUSIONS

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 6, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on July 1, 1981.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules, having considered all of the evidence adduced upon the records, files, and proceedings herein, I find the following:

The proposed rule shall be adopted as originally proposed.

STATE OF MINNESOTA

COMMISSIONER OF PUBLIC WELFARE

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General John Kirwin, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

John L. Kirwin

Special Assistant Attorney General

Dated: September 11, 1981

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

PLEASE NOTE:

No requests for notice were received.

Robert J. Hamper

Robert J. Hamper

Subscribed and sworn to before me this 11th day of Sept., 1981.

Dorothy Haider

HS20

DOROTHY HAIDER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Aug. 27, 1982

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Welfare Governing all Vending Stands and Business Enterprises of the Services for the Blind, 12 MCAR 2.079

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Robert J. Hamper, being first duly sworn, deposes and says:

That on the 11th day of September 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Robert J. Hamper

Robert J. Hamper

Subscribed and sworn to before me this 11th day of Sept., 1981.

Dorothy Haider

HS19

DOROTHY HAIDER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Aug. 27, 1982