

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJC

RULE REVIEW CHECKLIST

File No. 1721
DATE RECEIVED 8-6-90
REVIEW DATE 8-15-90
DUE DATE 8-20-90
(DIS)APPROVED 8-20-90 mjc
WITHDRAWN _____

Docket No. 05 0009 0402
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 8/8/90
REVISOR (DIS)APPROVED 8-15-90
FILED W/SEC. OF STATE 8/21/90
RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

March 19, 1990 Date published in State Register

NA Comments

NA Board's Authorizing Resolution

NA Date adopted

✓ Proposed Rule

✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule, ~~subds. 4 and 11~~ 248.07 subd 1 & 3 Statutory Authority

✓ Small Business Statement

NA Expenditure of public money statement

undated Signature

✓ Statement of Need and Reasonableness (if applicable)

✓ Small Business Statement

_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

May 29, 1990 Dated (30)/25 days before adoption

✓ Notice attached indicates it is attached

_____ Copy of rule or summary attached

✓ Publication in State Register

June 11, 1990 Date (30)/25 days before adoption

✓ 180-day deadline from:

NA Effective date of law requiring rule (14.12) (both rules) NA - Amendments

✓ end of comment period (§ 14.26) (rules without hearing)

_____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~

_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

July 18, 1990 Date

✓ Declaration of Attorney

Steve Suas Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: August 21, 1990

TO: JOE SAMARGIA
Commissioner of
Department of Jobs and Training

FROM: MARTHA J. CASSERLY mjc
Special Assistant
Attorney General by cbe

PHONE: 296-9421

SUBJECT: In the Matter of the Adopted Rule Relating to Vending Stands and Business Enterprises of Services for the Blind

The above-referenced rule has been approved as to its legality by the Attorney General on August 20, 1990.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

CBE:sc

Enclosures

cc: Steven Liss
William Brown, Chief Judge
MaryAnn Hruby

Department of Jobs and Training

Adopted Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind

Rules as Adopted

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to Minnesota Statutes, section 248.07, subdivision 14a, this chapter is issued by the commissioner of jobs and training to govern all vending stands and business enterprises established by the Services for the Blind, Department of Jobs and Training, for which the department is responsible. Licenses to blind persons will be issued according to this chapter and applicable statutes by the commissioner or a designee, hereinafter to be known as the licensing agency. A licensed blind person is an independent contractor to the licensing agency and is not an employee of the licensing agency or the state of Minnesota.

3321.0300 PERIOD OF LICENSE.

Each license will be issued upon execution of an operator's first agreement pursuant to part 3321.0500, subpart 1, for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

A. failure to operate according to parts 3321.0100 to 3321.1400, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property;

B. improvement of vision so that the operator no longer meets the definition of blindness under part 3321.0200;

C. 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;

D. withdrawal of the operator from the program upon the operator's written notification to the licensing agency; and

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E. failure to work as a licensed operator, relief operator, or take additional approved training related to the operation of an enterprise, a minimum of two weeks per year unless on an approved leave.

A license may be issued to a blind person to operate an enterprise, other than a vending machine enterprise, in the program without that person taking vending machine training. No licensee may be placed or transferred to a vending machine enterprise without first taking and satisfactorily completing vending machine training sufficient to operate the vending stand or business enterprise in question.

3321.0350 DETERMINATION OF VISUAL STATUS.

Subpart 1. **Testing; evidence of visual acuity.** In order to equitably determine ongoing compliance with visual requirements for operators under parts 3321.0200 and 3321.0300, item B, in years ending in zero and five all licensed vendors must provide current ophthalmological or optometric evidence documenting their visual status. "Current" means evidence of an examination no more than six months old from the date of submission. Evidence is sufficient if it allows the state ophthalmological consultant to determine whether or not the operator is legally blind. If the ophthalmological consultant determines the operator to be legally blind and specifically states that the blindness is permanent, the operator will not be subject to future examinations under this part.

Subp. 2. **License termination; failure to prove visual acuity.** Operators not providing ophthalmological or optometric evidence are presumed to be not legally blind and action must be taken under part 3321.0300 to terminate their license.

Operators found to be not legally blind on the basis of the submitted evidence shall have their licenses terminated under part 3321.0300. Their termination date is one year from the date of their notice of license termination. The operator must immediately be referred to the vocational rehabilitation unit of Services for the Blind and Visually Handicapped to be evaluated

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for eligibility for services that would lead to alternative vocational opportunities.

Subp. 3. **Cost of examination.** An operator may enter as an expense on their books submitted to the licensing agency the cost of obtaining ophthalmological or optometric evidence required by this chapter.

3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.

The licensing agency is responsible:

A. for furnishing each vending stand or business enterprise with adequate, suitable equipment, and replacement of such equipment and assistance in maintenance and repair of equipment; and

B. 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 unless mutually agreed otherwise by the licensing agency and the operator.

3321.0700 RIGHT TO, TITLE TO, AND INTEREST IN THE VENDING STAND EQUIPMENT AND STOCKS.

Subpart 1. **Inventories.** 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 or when operators withdraw from a specific vending stand or business enterprise location, the licensing agency will purchase for the new operator, at cost, salable merchandise and, at an amortized

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by Revisor _____

price, supplies remaining in the stand, assuming there is no amount owing in the departing 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. When a licensed operator under contract dies, the licensing agency must immediately take an inventory at the stand in cooperation with a member of the operator's family or a representative of the operator's estate. The licensing agency must then prepare a summary accounting of the deceased licensed operator's accounts with the licensing agency. If the balance is in favor of the licensing agency, the estate must pay that balance. If the balance is in favor of the deceased licensed operator, the licensing agency must pay the balance to the estate. The warrant will be made payable to the "Estate of [licensed operator's name]."

Subp. 2. **Operator determination of acquisition.** Beginning 12 months following the effective date of this subpart, an operator who begins to operate at a vending stand or business enterprise location shall determine what merchandise or supplies the new operator shall purchase from the departing operator. In the case of an operator disagreement over the purchase of supplies or merchandise, the departing operator may request that the licensing agency intervene and make a final decision. The departing operator shall be responsible for disposing of the merchandise or supply inventory not purchased by the new operator.

3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Due date.** Funds set aside from vending stand proceeds are due by the 25th of the following month.

3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

[For text of subpart 1, see M.R.]

Approved by Revisor _____

Subp. 2. **Operator duties.** 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 according to 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;

[For text of item B, see M.R.]

C. operate the vending stand according to all applicable health laws and regulations and any other applicable federal, state, or local law or regulation;

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

E. indemnify and hold harmless the state of Minnesota, its officers, or agents, for any acts or omissions of said operator that may result in the operator's liability to third parties, and the state shall not be liable for negligence based on any theory of liability; and

F. provide the licensing agency at least 60 days notice of intent to leave the program.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure the operation of each vending stand in the most productive and efficient manner possible. This supervision, assistance, and training must be performed according to the following policies in addition to other provisions of parts 3321.0100 to 3321.1400.

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

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preference will not prohibit the licensing agency from selecting an operator from the community in which the stand is located.. No operator may transfer to another stand and bid back into the stand the operator just left in the same bidding sequence. An operator is in default if either of the following is more than 30 days late:

(1) reports under subpart 2, item D; or

(2) payment in full under part 3321.0800.

In case of any default, the operator will be assessed a late fee of $20. The licensing agency shall notify the operator of the default and penalty. An operator who is in default twice within six months will not be permitted to transfer to new or vacated stands, after notice of disqualification from the licensing agency. The operator may regain eligibility to transfer if the operator has cured any prior default and has not been in default for six consecutive months after the prior defaults have been cured. Seniority shall be determined on the basis of continuous service in the stand program with the licensing agency. A leave of absence for medical reasons, supported by a doctors statement, may be granted by the licensing agency and operator management committee and the operator shall continue to accrue seniority during the leave. A medical leave of absence for up to three months, which may be later extended for an additional three months, may be granted under a plan in which the requesting operator retains responsibility for and general management of the current vending stand. A medical leave up to one year may also be granted under a plan in which the operator permanently gives up all responsibility for and rights to the current vending stand. A doctor's statement of ability to return to work is required before an operator's actual return to a stand.

A general leave of absence may be granted by the licensing agency and operator management committee for a period up to two years during which time the operator shall not accrue seniority but may exercise seniority rights for new or vacated stands. The operator shall retain seniority accrued up to the date of

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the leave. An operator on general leave shall give up all rights to the vending stand or business enterprise which they are operating.

B. When it has been determined that a relief operator or an assistant or assistants must be employed, the operator shall first make attempts to locate a handicapped individual before approving the employment of a nonhandicapped 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 will acquire liability and if necessary workers' compensation 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.

E. The licensing agency shall review all operator books and other information with specific attention to expenses and take those steps necessary to ensure operator payment of those expenses.

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

[For text of subpart 1, see M.R.]

Subp. 2. **Representation, nominations, and terms.** The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

[For text of items A to C, see M.R.]

D. The committee shall elect its own chair and other officers. The chair shall appoint subcommittees as necessary.

E. The full committee will meet a minimum of four times a year. Meetings may be called by notice of either the licensing agency or the chair of the committee. Subcommittees will meet as necessary to carry on their functions.

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[For text of item F, see M.R.]

[For text of subp 3, see M.R.]

3321.1200 REVIEW OF AGENCY DECISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to Minnesota Statutes, chapter 14 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.

[For text of item A, see M.R.]

B. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the director 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, whose designee shall serve as an impartial presiding officer, and then notify the operator of the time and place for the hearing. The operator must be provided sufficient preparation time before the hearing. The operator shall be provided a copy of the hearing procedures and rules.

D. The operator has the right to be represented by counsel, and may present witnesses and cross-examine adverse witnesses.

E. A transcript of the proceeding must be available to the operator.

F. After receipt of the report of the administrative

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by Revisor _____

law judge the director shall issue a written decision within 15 days.

Subp. 4. **Arbitration panel.** 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 Code of Federal Regulations, title 34, section 395.13 (1981).

3321.1300 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, the 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 the data. The operator management committee organized under part 3321.1100 shall be provided all individual and program data necessary to carry out its purpose and function.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Aug 20 1990

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 21 1990

Joan Anderson Growe

Secretary of State

2:04PM

STATE OF MINNESOTA
DEPARTMENT OF JOBS AND TRAINING

In the Matter of the Proposed Adoption of the Rules of State of Minnesota Governing Vending Stands and Business Enterprises of Services for the Blind	SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

This order supplements my FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING dated July 18, 1990.

Based upon advice of legal counsel, I find the following:

> It is necessary that Rule 3321.0300, paragraph E, be changed for purposes of clarification by adding the phrase "other than a vending machine enterprise" after the word "enterprise" at page 2, line 6, as set forth in AR1694 and that this change is not substantial.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Vending Stands and Business Enterprises of Services for the Blind as proposed and as modified by this Order are adopted this 20th day of August, 1990, pursuant to authority vested in me by Minnesota Statutes, sections 268.0122, subdivision 5, and 248.07, subdivision 14a.

Joe Samargia
Commissioner of
Department of Jobs and Training

Stat Authority 248.07 Subd 14a

The commissioner shall adopt rules to set standards for the provision of rehabilitative services to blind and visually handicapped persons.

End of comment period is stated as July 12, 1990 in the Notice of Intend - published in the State Register - June 11, 1990 = 30 days

3321.0700 subp 2 Operator determination of acquisition - doesn't make sense

if the new operator determines what he wants to buy and if there is an disagreement the licensing agency makes a final decision and the departing operator must be responsible for merchandise not purchased - what does the agency decide. Can the new operator be forced to purchase what he doesn't want to purchase?

3321.1000

subd 2 A. perform faithfully and to the best of his ability - what criteria do you use to judge faithfully or best of his ability

3321.0300 E.

2nd paragraph = they are ~~distinguishing~~ distenguishing between a license being "issued" "placed" or "transfered". I don't understand why you don't need ~~a license~~ training if a license is issued but you do need training if a license is placed or transfered

Department of Jobs and Training

Adopted Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind

Rules as Adopted

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

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B. improvement of vision so that the operator no longer meets the definition of blindness under part 3321.0200;

C. 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;

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E. failure to work as a licensed operator, relief operator, or take additional approved training related to the operation of an enterprise, a minimum of two weeks per year unless on an approved leave.

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vocational opportunities.

Subp. 3. **Cost of examination.** An operator may enter as an expense on their books submitted to the licensing agency the cost of obtaining ophthalmological or optometric evidence required by this chapter.

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amount owing in the departing 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. When a licensed operator under contract dies, the licensing agency must immediately take an inventory at the stand in cooperation with a member of the operator's family or a representative of the operator's estate. The licensing agency must then prepare a summary accounting of the deceased licensed operator's accounts with the licensing agency. If the balance is in favor of the licensing agency, the estate must pay that balance. If the balance is in favor of the deceased licensed operator, the licensing agency must pay the balance to the estate. The warrant will be made payable to the "Estate of [licensed operator's name]."

Subp. 2. **Operator determination of acquisition.** Beginning 12 months following the effective date of this subpart, an operator who begins to operate at a vending stand or business enterprise location shall determine what merchandise or supplies the new operator shall purchase from the departing operator. In the case of an operator disagreement over the purchase of supplies or merchandise, the departing operator may request that the licensing agency intervene and make a final decision. The departing operator shall be responsible for disposing of the merchandise or supply inventory not purchased by the new operator.

3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Due date.** Funds set aside from vending stand proceeds are due by the 25th of the following month.

3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

[For text of subpart 1, see M.R.]

Subp. 2. **Operator duties.** 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 according to 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;

[For text of item B, see M.R.]

C. operate the vending stand according to all applicable health laws and regulations and any other applicable federal, state, or local law or regulation;

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

E. indemnify and hold harmless the state of Minnesota, its officers, or agents, for any acts or omissions of said operator that may result in the operator's liability to third parties, and the state shall not be liable for negligence based on any theory of liability; and

F. provide the licensing agency at least 60 days notice of intent to leave the program.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure the operation of each vending stand in the most productive and efficient manner possible. This supervision, assistance, and training must be performed according to the following policies in addition to other provisions of parts 3321.0100 to 3321.1400.

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. No operator may transfer to another stand and bid back into the stand the operator just left in the same bidding sequence. An operator is in default if either of the following is more than 30 days late:

(1) reports under subpart 2, item D; or

(2) payment in full under part 3321.0800.

In case of any default, the operator will be assessed a late fee of $20. The licensing agency shall notify the operator of the default and penalty. An operator who is in default twice within six months will not be permitted to transfer to new or vacated stands, after notice of disqualification from the licensing agency. The operator may regain eligibility to transfer if the operator has cured any prior default and has not been in default for six consecutive months after the prior defaults have been cured. Seniority shall be determined on the basis of continuous service in the stand program with the licensing agency. A leave of absence for medical reasons, supported by a doctors statement, may be granted by the licensing agency and operator management committee and the operator shall continue to accrue seniority during the leave. A medical leave of absence for up to three months, which may be later extended for an additional three months, may be granted under a plan in which the requesting operator retains responsibility for and general management of the current vending stand. A medical leave up to one year may also be granted under a plan in which the operator permanently gives up all responsibility for and rights to the current vending stand. A doctor's statement of ability to return to work is required before an operator's actual return to a stand.

A general leave of absence may be granted by the licensing agency and operator management committee for a period up to two years during which time the operator shall not accrue seniority but may exercise seniority rights for new or vacated stands. The operator shall retain seniority accrued up to the date of the leave. An operator on general leave shall give up all

rights to the vending stand or business enterprise which they are operating.

B. When it has been determined that a relief operator or an assistant or assistants must be employed, the operator shall first make attempts to locate a handicapped individual before approving the employment of a nonhandicapped 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 will acquire liability and if necessary workers' compensation 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.

E. The licensing agency shall review all operator books and other information with specific attention to expenses and take those steps necessary to ensure operator payment of those expenses.

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

[For text of subpart 1, see M.R.]

Subp. 2. **Representation, nominations, and terms.** The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

[For text of items A to C, see M.R.]

D. The committee shall elect its own chair and other officers. The chair shall appoint subcommittees as necessary.

E. The full committee will meet a minimum of four times a year. Meetings may be called by notice of either the licensing agency or the chair of the committee. Subcommittees will meet as necessary to carry on their functions.

[For text of item F, see M.R.]

[For text of subp 3, see M.R.]

3321.1200 REVIEW OF AGENCY DECISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to Minnesota Statutes, chapter 14 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.

[For text of item A, see M.R.]

B. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the director 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, whose designee shall serve as an impartial presiding officer, and then notify the operator of the time and place for the hearing. The operator must be provided sufficient preparation time before the hearing. The operator shall be provided a copy of the hearing procedures and rules.

D. The operator has the right to be represented by counsel, and may present witnesses and cross-examine adverse witnesses.

E. A transcript of the proceeding must be available to the operator.

F. After receipt of the report of the administrative law judge the director shall issue a written decision within 15

days.

Subp. 4. **Arbitration panel.** 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 Code of Federal Regulations, title 34, section 395.13 (1981).

3321.1300 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, the 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 the data. The operator management committee organized under part 3321.1100 shall be provided all individual and program data necessary to carry out its purpose and function.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind

AGENCY: Department of Jobs and Training

MINNESOTA RULES: Chapter 3321

The attached rules are approved for filing with the Secretary of State

Paul M. Marinac
Assistant Deputy Revisor

MINNESOTA ATTORNEY GENERAL - Jobs and Training

M E M O R A N D U M

TO : Christie Eller
Assistant Attorney General
Public Finance

FROM : Steven B. Liss
Special Assistant
Attorney General

DATE : August 3, 1990

PHONE : 296-8425

SUBJECT : Rules for State Services for the Blind

Enclosed for your review is the rulemaking record for the adoption of rules without a public hearing. Please call if you have any questions.

Thanks.

SBL:cs:.aw6

Enclosure

cc: Roger Sorbel

3321.1000 subp 2. E.
indemnify and hold harmless - shouldn't they have to sign something agreeing to this indemnification

3321.1000 ~~subp~~ subp 3 A. - leave of absence general leave = what ~~Criteria~~ is used in granting a general leave of absence

~~3321.1000 subp 3 B.~~

Mailing

Mailing was made on May 29, 1990
Mailing list was certificated on July 19, 1990 - Generally they are certified and mailed around the same time.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind

AGENCY: Department of Jobs and Training

MINNESOTA RULES: Chapter 3321

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Department of Jobs and Training

Proposed Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind

Rules as Proposed

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to Minnesota Statutes, section 248.07, subdivision ~~1~~ 14a, ~~the following rules are hereby~~ this chapter is issued by the commissioner of jobs and training to govern all vending stands and business enterprises established by the Services for the Blind, Department of Jobs and Training, for which the department is responsible. Licenses to blind persons will be issued ~~in accordance with these rules~~ according to this chapter and applicable statutes by the commissioner or ~~his~~ a designee, hereinafter to be known as the licensing agency. A licensed blind person is an independent contractor to the licensing agency and is not an employee of the licensing agency or the state of Minnesota.

3321.0300 PERIOD OF LICENSE.

Each license will be issued upon execution of an operator's first agreement pursuant to part 3321.0500, subpart 1, for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

A. failure to operate ~~in accordance with~~ according to parts 3321.0100 to 3321.1400, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property;

B. improvement of vision so that the operator no longer meets the definition of blindness ~~as stated in item A~~ under part 3321.0200;

C. 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; ~~and~~

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D. withdrawal of the operator from the program upon the operator's written notification to the licensing agency; and

E. failure to work as a licensed operator, relief operator, or take additional approved training related to the operation of an enterprise, a minimum of two weeks per year unless on an approved leave.

A license may be issued to a blind person to operate an enterprise in the program without that person taking vending machine training. No licensee may be placed or transferred to a vending machine enterprise without first taking and satisfactorily completing vending machine training sufficient to operate the vending stand or business enterprise in question.

3321.0350 DETERMINATION OF VISUAL STATUS.

Subpart 1. **Testing; evidence of visual acuity.** In order to equitably determine ongoing compliance with visual requirements for operators under parts 3321.0200 and 3321.0300, item B, in years ending in zero and five all licensed vendors must provide current ophthalmological or optometric evidence documenting their visual status. "Current" means evidence of an examination no more than six months old from the date of submission. Evidence is sufficient if it allows the state ophthalmological consultant to determine whether or not the operator is legally blind. If the ophthalmological consultant determines the operator to be legally blind and specifically states that the blindness is permanent, the operator will not be subject to future examinations under this part.

Subp. 2. **License termination; failure to prove visual acuity.** Operators not providing ophthalmological or optometric evidence are presumed to be not legally blind and action must be taken under part 3321.0300 to terminate their license.

Operators found to be not legally blind on the basis of the submitted evidence shall have their licenses terminated under part 3321.0300. Their termination date is one year from the date of their notice of license termination. The operator must

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immediately be referred to the vocational rehabilitation unit of Services for the Blind and Visually Handicapped to be evaluated for eligibility for services that would lead to alternative vocational opportunities.

Subp. 3. **Cost of examination.** An operator may enter as an expense on their books submitted to the licensing agency the cost of obtaining ophthalmological or optometric evidence required by this chapter.

3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.

The licensing agency is responsible:

A. for furnishing each vending stand or business enterprise with adequate, suitable equipment ~~and maintenance, repair~~, and replacement of such equipment and assistance in maintenance and repair of equipment; and

B. 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 unless mutually agreed otherwise by the licensing agency and the operator.

3321.0700 RIGHT TO, TITLE TO, AND INTEREST IN THE VENDING STAND EQUIPMENT AND STOCKS.

Subpart 1. **Inventories.** 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 or when operators withdraw from a specific vending stand or business

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enterprise location, the licensing agency will purchase for the new operator, at ~~the prevailing wholesale price~~ cost, ~~all~~ salable merchandise and, at an amortized price, ~~all~~ supplies remaining in the stand, assuming there is no ~~delinquency~~ amount owing in the departing 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. When a licensed operator under contract dies, the licensing agency must immediately take an inventory at the stand in cooperation with a member of the operator's family or a representative of the operator's estate. The licensing agency must then prepare a summary accounting of the deceased licensed operator's accounts with the licensing agency. If the balance is in favor of the licensing agency, the estate must pay that balance. If the balance is in favor of the deceased licensed operator, the licensing agency must pay the balance to the estate. The warrant will be made payable to the "Estate of [licensed operator's name]."

Subp. 2. **Operator determination of acquisition.** Beginning 12 months following the effective date of this subpart, an operator who begins to operate at a vending stand or business enterprise location shall determine what merchandise or supplies the new operator shall purchase from the departing operator. In the case of an operator disagreement over the purchase of supplies or merchandise, the departing operator may request that the licensing agency intervene and make a final decision. The departing operator shall be responsible for disposing of the merchandise or supply inventory not purchased by the new operator.

3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Due date.** Funds set aside from vending stand proceeds are due by the 25th of the following month.

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3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

[For text of subpart 1, see M.R.]

Subp. 2. **Operator duties.** 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~~ according to 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;

[For text of item B, see M.R.]

C. operate the vending stand ~~in accordance with~~ according to all applicable health laws and regulations and any other applicable federal, state, or local law or regulation;

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

~~E. make no credit sales; and~~

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

E. indemnify and hold harmless the state of Minnesota, its officers, or agents, for any acts or omissions of said operator that may result in the operator's liability to third parties, and the state shall not be liable for negligence based on any theory of liability; and

F. provide the licensing agency at least 60 days notice of intent to leave the program.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure the operation of each vending stand in the most

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productive and efficient manner possible. This supervision, assistance, and training must be performed ~~in accordance with~~ according to the following policies in addition to other provisions of parts 3321.0100 to 3321.1400.

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. No operator may transfer to another stand and bid back into the stand the operator just left in the same bidding sequence. An operator is in default if either of the following is more than 30 days late:

(1) reports under subpart 2, item D; or

(2) payment in full under part 3321.0800.

In case of any default, the operator will be assessed a late fee of $20. The licensing agency shall notify the operator of the default and penalty. An operator who is in default twice within six months will not be permitted to transfer to new or vacated stands, after notice of disqualification from the licensing agency. The operator may regain eligibility to transfer if the operator has cured any prior default and has not been in default for six consecutive months after the prior defaults have been cured. 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.~~ A leave of absence for medical reasons, supported by a doctor's statement, may be granted by the licensing agency and operator management committee and the operator shall continue to accrue seniority

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during the leave. A medical leave of absence for up to three months, which may be later extended for an additional three months, may be granted under a plan in which the requesting operator retains responsibility for and general management of the current vending stand. A medical leave up to one year may also be granted under a plan in which the operator permanently gives up all responsibility for and rights to the current vending stand. A doctor's statement of ability to return to work is required before an operator's actual return to a stand.

A general leave of absence may be granted by the licensing agency and operator management committee for a period up to two years during which time the operator shall not accrue seniority but may exercise seniority rights for new or vacated stands. The operator shall retain seniority accrued up to the date of the leave. An operator on general leave shall give up all rights to the vending stand or business enterprise which they are operating.

B. When it has been determined that a relief operator or an assistant or assistants must be employed, the ~~licensing agency~~ operator shall first make attempts to locate a handicapped individual before approving the employment of a nonhandicapped 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~~ acquire liability and if necessary workers' compensation 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.

E. The licensing agency shall review all operator

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books and other information with specific attention to expenses and take those steps necessary to ensure operator payment of those expenses.

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

[For text of subpart 1, see M.R.]

Subp. 2. **Representation, nominations, and terms.** The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

[For text of items A to C, see M.R.]

D. The committee shall elect its own ~~chairman~~ chair and other officers. The ~~chairman~~ chair shall appoint subcommittees as necessary.

E. The full committee will meet a minimum of ~~twice~~ four times a year. Meetings may be called by notice of either the licensing agency or the ~~chairman~~ chair of the committee. Subcommittees will meet as necessary to carry on their functions.

[For text of item F, see M.R.]

[For text of subp 3, see M.R.]

3321.1200 REVIEW OF AGENCY DECISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to Minnesota Statutes, chapter 14 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.

[For text of item A, see M.R.]

B. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the ~~administrator~~ director 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

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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, whose designee shall serve as an impartial presiding officer, and then notify the operator of the time and place for the hearing. The operator must be provided sufficient preparation time before the hearing. The operator shall be provided a copy of the hearing procedures and rules.

D. The operator has the right to be represented by counsel, and may present witnesses and cross-examine adverse witnesses.

E. A transcript of the proceeding must be available to the operator.

F. After receipt of the report of the administrative law judge the ~~state administrator (or, in the case of license revocation, the commissioner of jobs and training)~~ director shall issue a proposed written decision within 15 days. ~~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 Minnesota Statutes, section 248.07, subdivision 15, clause (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.~~

Subp. 4. **Arbitration panel.** 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 Code of Federal Regulations, title ~~45~~ 34, section ~~1369.13 (1979)~~ 395.13 (1981).

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3321.1300 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~~ the 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~~ the data. The operator management committee organized under part 3321.1100 shall be provided all individual and program data necessary to carry out its purpose and function.

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CHAPTER 3321

DEPARTMENT OF JOBS AND TRAINING
SERVICES FOR THE BLIND

VENDING STANDS AND BUSINESS ENTERPRISES
OF SERVICES FOR THE BLIND

IN THE MATTER OF THE PROPOSED
AMENDED RULES OF THE DEPARTMENT
OF JOBS AND TRAINING GOVERNING
THE OPERATION OF VENDING STANDS
AND BUSINESS ENTERPRISES

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION AND BACKGROUND

Vending Stands and Business Enterprises to provide employment opportunities for the blind were implemented on federal property in 1936 as a result of Public Law 732, commonly known as the Randolph-Sheppard Act. The Act has been amended several times since, as well as regulations (34 CFR Part 395) developed. See appendix, p. 1 to 31. In short, the Act provides a priority for blind persons to operate vending facilities on federal property.

The State of Minnesota implemented this activity on federal property in approximately 1938. Statutory authority to provide such a priority on state property occurred in 1955, and has been amended, along with other Services for the Blind (SSB) statutory provisions. See appendix, pp. 32 to 36. Rules were developed (DPW #79) and effective September 7, 1961. See appendix, pp. 37 to 41. This rule was later amended, becoming known as 12 MCAR Section 2.079, and effective November 2, 1981. See appendix, pp. 42 to 54. 12 MCAR Section 2.079 was converted in format and citation in August of 1984, and became part of Chapter 9570, Department of Public Welfare Rules. See appendix, pp. 55 to 60. Upon transfer of Services for the Blind from the Department of Human Services to the Department of Jobs and Training in 1985, and the housekeeping activity related to Minnesota Rules, all appropriate provisions were transferred to Chapter 3321. See appendix, pp. 61 to 65.

RULE DEVELOPMENT

The proposed amended rule modifies the operation of vending stands and business enterprises. These amended rules have been prepared in accordance with the Minnesota Administrative Procedures Act, Minnesota Statutes, Chapter 14. The amended rules are proposed pursuant to Minnesota Statutes 1988, section 248.07, subdivision 14a (See appendix, p. 35) and Code of Federal Regulations Title 34, Part 395.4. See appendix, p. 19.

The development of these amended rules informally began as a result of action by the Operator Management Committee (OMC) and the Business Enterprises Program (known hereafter as BEP or state

licensing agency or SLA), the activity in the department responsible for administration of the rule, on January 15, 1988. The OMC is an elected group of blind vendors (known hereafter as operators or operator or licensee) responsible to participate with the licensing agency in major administrative decisions and policy and program development, among other duties. See appendix, pp. 6,23,63,64.

There was recognition by both parties that the rule had not been reviewed since 1981 and from time to time review was a necessary activity. Additionally, there was recognition that licensees were responsible, through other documents, for more than was contained in the rule and all applicable responsibilities, conditions of licensing, etc., should be in one place. Finally, There were certain known problems that could only be resolved through rule amendment.

Therefore, a sub-committee of the OMC was formed along with representatives of the BEP. Since that time considerable time has been given to the project, as well as information provided to licensees and their input gained. The rule only applies to operation of the BEP and licensees so the universe was well defined and reachable for input. This is the primary reason a Rule Adopted Without Public Hearing promulgation process has been chosen as consensus on the issues and resolution was gained.

The following is a chronology of the activities leading to the amended rule promulgation:

January 15,1988	OMC appoints sub-committee; BEP appoints staff representatives, known as Committee hereafter.
May 26,1988	Meeting of Committee.
June 16,1988	Meeting of Committee.
August 1,1988	Rule draft 3 to all licensees and staff for input and comment.
August 16,1988	Meetings in Rochester and Faribault with licensees to gain input and comment.
September 8,1988	Meeting in St.Paul with licensees to gain input and comment.
September 20,1988	Meeting in Minneapolis with licensees to gain input and comment.
September 28,1988	Meeting in Duluth with licensees to gain input and comment.
October 14,1988	OMC meeting discusses subject matter.

[Key staff person was reassigned in September 1988 until March 1989]

July 13,1989	Meeting of Committee.
July 14,1989	OMC meeting discusses subject matter.
July 19,1989	Rule draft 4 to all licensees and staff for input and comment.
August 21, 1989	Rule draft 4.1 to staff for comment.

September 15,1989	Meeting of Committee.
September 28,1989	Rule draft 5 to all licensees and staff for input and comment.
	Letter to Rehabilitation Services Administration (U.S. Department of Education) requesting review and comment. (RSA)
November 3,1989	OMC meeting discusses subject matter.
December 20,1989	Meeting in Mankato with licensees to gain input and comment.
January 4,1990	Meeting in Minneapolis with licensees to gain input and comment.
January 9,1990	Phone call from RSA providing review and requested changes in rule draft.
January 25, 1990	Meeting in Grand Rapids with licensees to gain input and comment.
February 13,1990	Meeting in Brainerd with licensees to gain input and comment.
March 9, 1990	Meeting of Committee.
April 20, 1990	Approval by OMC of final draft.

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES

Reference to subdivision 14a rather than 11 of Minnesota Statutes, section 248.07 is necessary as it is that citation that gives authority for rulemaking. Justification for previous reference to subdivision 11 is unknown.

The rule part is amended to indicate the exact relationship of the licensee and the State. While never part of rule previously, this statement was included in the operator agreement required under 3321.0500. See appendix, pp. 66 to 69. This is necessary in rule to cover those periods when the licensee is not under a specific agreement with the licensing agency, but is still an active licensee. Additionally, this relationship is so basic and potentially far-reaching that it must be extremely clear from the outset, which can best be accomplished through inclusion in this rule.

3321.0300 PERIOD OF LICENSE

The commencement of licensing is a very important date to licensees and BEP insofaras seniority of experience in operating stands is a primary consideration in awarding new or vacated stands to licensees. The existing rule does not explicitly state when licensing begins. Past practice in lieu of other guidance has dictated that initial licensing begins upon the execution of a first agreement with the potential licensee. The phrase "seniority of experience in operating stands" in the statute supports that practice as it indicates a need for "experience". Experience

cannot be gained in the BEP without first signing an agreement for operation of a particular enterprise.

Subpart B. contains an unexplained error in prior drafting. The definition of blindness referred to in this part is not in subpart A of this citation. Rather, it is in subpart A of 3321.0200.

Subpart D. has been proposed to bring into the rule a policy which has been enforced since 1977. At that time, a document entitled "Business Enterprises Program for the Blind Program Policies" was developed. See appendix, pp. 70 to 86. Many of the those provisions were already part of federal or state rule, some were not. This particular provision was not. The Committee felt that a condition under which a license could be terminated was so important, and coupled with the fact that other such conditions were already included in the rule, it needs to be incorporated in the rule. The merit of the provision at all is based on fairness. The Committee as well as the rank and file operators felt that if a vendor's license meant anything, such as maintaining their seniority to bid on lucrative locations or any other, there must be a minimal level of continuing involvement. Maintaining the status quo was viewed as meeting a "minimal" criteria.

A new passage has been proposed which was also part of the aforementioned policy document. This passage creates a condition where a conditional license is available to a potential licensee who has not completed the total training program, while allowing an opportunity for the full license upon further training. Situations have occurred over the years where persons have not completed vending machine training and then attempted to transfer to such locations. This requirement puts more formal "teeth" into the former policy and is properly put into the rule where other conditions of licensing are formally stated. See appendix, p. 79.

3321.0350 DETERMINATION OF VISUAL STATUS

This whole citation is added to the rule and is migrated from the existing policy book. See appendix, p.85. It was determined by the Committee and Counsel that such an important issue that affects an operator's licensure, must be in the rule.

3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS

Subpart A is amended to reflect longstanding practice, training and philosophy. Without amendment the current passage could be interpreted to mean that the licensing agency (BEP) was responsible in every case for all maintenance activities. The philosophy of the BEP and department, however, has been that blind vendors should be as independent as possible. While this has social benefit, more importantly it is the blind vendor who is on site where a maintenance problem exists and the sooner the problem is corrected, the more sales volume and ultimately profit will be derived. Each vendor is trained in maintenance activities consistent with their individual ability. Therefore, the amendment is reasonable in that the passage reflects a shared responsibility

for maintenance activities.

Subpart B is amended to allow flexibility in determining appropriate inventory levels. The current language assumes that the original inventory level was appropriate for the business. Experience of the BEP is clear that this is a false assumption. Vendors leaving a specific stand from time to time have too much inventory. The new vendor becomes responsible for that inventory pursuant to 3321.0700. As the vendor pays for the provided merchandise, there are cases where the amended language would allow both parties to lower the required level of inventory. Less storage space required would result as well as less capital tied up in inventory.

3321.0700 RIGHT TO, TITLE TO, AND INTEREST IN THE VENDING STAND EQUIPMENT AND STOCKS.

Several amendments are proposed for this citation. First, language is proposed to more broadly encompass the actual situations that arise when a vendor changes business enterprises. Current language appears to only apply to a situation where an operator's license is terminated. This occurs occasionally, but more regularly occurs the situation where an operator moves from one business enterprise to another. The language proposed extends the same practice to that more common situation. The language proposed reflects actual practice for more than 20 years. Minor clarifying language is also proposed to identify the new and departing individuals.

A second more substantial amendment is proposed which relates to BEP activity in cases of operator death. The proposed language has been in place since 1977 as part of the aforementioned policy document. See appendix, p. 8-9. The language has worked well, and because of direct connection to other responsibilities already in the rule related to inventory, it was felt the language should become part of the formal rule.

The final change in the citation was initially the most controversial of any proposed amendment. Most all parties agreed that change was necessary. Specific language that provided fairness to all parties was the basis for initial disagreement. In the acquisition of inventory by a new vendor, there are three interests involved- the new vendor, the departing vendor, and the merchandise revolving fund. The merchandise revolving fund is the source for purchase of new inventory, including that from departing operators, and the depository for the repayment for said inventory from the new operator.

Past practice found BEP purchasing all salable inventory and supplies from departing operators, pursuant to existing rule. In many cases, however, more merchandise than necessary was on site, as well as product that while salable under the right circumstances, was not a good purchase for the new operator. These items include holiday candy, cards, and off-brand merchandise. Some operators commenting on this portion of the rule

wanted the new operator to have complete discretion to determine what, if any, merchandise they would purchase from the departing operator. Opponents wanted to be sure they would be reimbursed for their inventory when they left, but did not want the revolving fund to pay them for the merchandise not able to be re-sold, creating a negative flow on the fund. The OMC drafted its own proposal which is the substance of proposed subpart 2.

Subpart 2 provides for the new operator to determine what, if any, merchandise and supplies would be purchased from the departing vendor. If the departing vendor objects, the SLA would make the determination. Additionally, there is a 1 year "grandfather clause" on this subpart to give adequate time for disposition by any vendor of product potentially being objected to by other parties. This process gives all parties formal input into the purchase/sale transaction, and provides an appeal provision. It should be noted that the SLA decision could further be appealed pursuant to 3321.1200, REVIEW OF AGENCY DECISIONS. See appendix, pp.64-65.

3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS

This citation is proposed to be amended by adding a due date for set aside as defined in the citation. Current language only indicates "The operator shall pay these set-aside funds monthly to the licensing agency." A due date is important in order to determine if an operator is current in these payments. Due dates are commonplace in business transactions in order to be clear about exactly when one must act to remain in good standing with one's creditors. The reports upon which set aside is determined are due on the 10th of the following month in question. See appendix, pp.62-63. Slightly greater than two weeks, taking into account mailing time, was determined by the Committee to be adequate and reasonable.

3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

Subpart 2.C.is amended to include other regulation the operator must comply with in the operation of the sub-contracted business. The operator is already bound to this in the standard contract (See appendix, p.67), but the Committee felt it was consistent with the provisions already in the this rulepart relating to "health laws and regulations" and the passage should therefore be similarly included in the formal rule document. To be bound to all applicable laws and regulations is consistent with the sub-contracting relationship in most venues and is a reasonable condition for the awarding of the privilege of operating a business enterprise.

Subpart 2, D. and E. are proposed to be deleted from the rule. Subpart D. Requires that merchandise purchases by an operator be made strictly in cash unless permission is gained. This requirement cannot be strictly adhered to in practice, and in fact has not been. The nature of business with many wholesalers is that

they prefer to do business by monthly billings, rather than cash. Also making requests in writing to the SLA as well as written responses is burdensome because no real purpose is served in requiring cash purchases. The SLA does not become responsible for the purchase if it is or is not made in cash, with or without permission. The only benefit may be to try to assure that the operator not get behind in their debts. The Committee believed responsible adults should be left to grapple with this dilemma on their own, within reasonable limits. See subpart 3, E., below.

Old subpart 2, E., is philosophically related to the previous discussion as well as also not being possible in every business enterprise. A number of business enterprises are on state property where there is a captive or custodial population who do not have cash to make purchases but rather make "charge" purchases which the state makes good on through a state warrant. To retain in rule an inappropriate or unenforceable provision is not reasonable.

New subpart 2, D., adds a clarification to the requirement that operators list their daily sales in their monthly reports by type. The SLA is responsible to review said reports and to provide supervision and assistance so that each vending stand be operated in the most productive and efficient manner possible. Towards that end, listing sales by type allows for in-depth analysis of the sales upon which guidance and decision making can occur. Sales may be from a variety of sources.

New subpart 2, E., migrates language from the standard operator contract into this rulepart where other operator duties and responsibilities are stated. See appendix, p.68.

New subpart 2,F., migrates language from the standard operator contract into this rulepart where other operator duties and responsibilities are stated. A change has been made, however, lengthening the time required of the notice from 30 days to 60 days. The licensing agency is required to operate a procedure to fill the anticipated vacancy and the Committee determined that more advance time was necessary to operate the process .

Subpart 3, A., is proposed to be changed in several ways.

A change is proposed such that an operators ability to transfer from one location to another is at least contingent on their ability to meet their obligations to the SLA under existing and new ruleparts. Operators and SLA alike for some time have felt strongly that operators not current in their payments and reports to the SLA should be limited in their transferability. This is evidenced by the OMC having passed a policy in this regard. See appendix, p.79. At the least, the expectation that operators provide timely payments and reports pursuant to the rule or have their "preference" impinged upon is supported by Minnesota Statutes section 248.07, subdivision 8 which reads:

" In granting licenses for new or vacated stands preference on the basis of seniority of experience in operating stands under

the control of the commissioner shall be given to capable operators who are deemed competent to handle the enterprise under consideration." See appendix, p. 34.

The proposed language provides specific conditions under which an operator is deemed not capable nor competent. The proposed language is reasonable for several reasons. First, the 30 day late period for reports and payments takes into account almost all acceptable reasons an operator may have for tardiness, such as routine vacations, acute medical conditions, lost invoices, or similar circumstances. This time period is so benevolent that only those who do not want to report or pay will be affected.

Second, the operator is given two chances before the preference is limited. Additionally, the operator may regain full preference upon a showing of improved performance for such a duration (6 months) that all parties can be assured that changed behavior has resulted.

A safeguard for operators is that the licensing agency must notify them of default so that they have advance notice of the potential for transfer limitations as well as an opportunity to question whether or not they are in default, as the situation occurs.

Operators around the state noted that while they agreed with the limitation on an operator's ability to transfer based on their record of payment and report submittal, they felt that for the most part this did not address the issue of late reports and payments by operators who did not have an interest in moving. They suggested that language be developed to charge a penalty to operators for late submittal of reports and payments. The Committee therefore developed the language, in conjunction with language limiting transfer, such that a penalty fee be imposed. The $ 20.00 fee was felt to be large enough to be stimulatory for tardy submission, but yet not outrageous for the offense.

Also contained in this part is language which has been migrated from the BEP policy manual regarding bidding back into one's own business in the same bidding sequence. This policy was passed by the OMC many years ago to protect the integrity of the bid process. See appendix, p. 79. Should an operator accept another business, his/her enterprise is then "bid out". This policy precluded them to bid back into their own business and disrupt the process for other operators. This circumstance had occurred and the OMC adopted this policy as a result. The policy has been unchallenged and supported by operators, the only group to which it applies.

Significant language is also proposed regarding leaves of absence. For many years there have been policies regarding sick leave. See appendix, pp.75-78. The previous policies had three tiers with varying responsibilities for the parties involved at all three levels. The experience of the SLA and the OMC, however, was that the circumstances presented by operators did not fit neatly into these three tiers. Therefore, the parties agreed to variations which better fit the circumstances.

Two variations have emerged, a "short-term" medical leave and a "long-term" medical leave. Both have conditions in common, which provide reasonableness in their application. Both

require a doctors statement to assure a condition exists of the severity to require a leave; both require the SLA's and the OMC's approval, and both provide that the vendor's seniority continue to accrue. Differences include the length of time, and whether the operator retains responsibility and preference for the particular location. In the case of the long term medical leave, the operator gives up any claim to the current location. The SLA and OMC believe this is essential in order to assure continuity and stability of service to customers. This is and must be a major consideration in all decisions made by the parties. Long term medical leaves of this nature have been granted five times in the last seven years and have shown to be a good tool for all parties.

A new type of leave has been introduced in these proposed ruleparts, a general leave of absence. This language has been developed as a result of a situation several years ago. The OMC and SLA was approached by an operator who wanted to return to school for training in an unrelated area. Unsure if he would be successful, he requested a leave of absence and wanted to retain his seniority.

The SLA and the OMC were sympathetic for several reasons, not the least of which were both parties responsibilities for "upward mobility" training pursuant to Code of Federal Regulations section 395.11,.14,.3 . See appendix, pp.18,22-23.

At the time, however, there were not state ruleparts which were viewed as supportive and the leave was not granted. It was clear, however, that changes needed to made in the state rule to better specify conditions under which such a leave could be granted.

The current language was drafted in such a way as to provide opportunity for operators who wished to try other things, or just needed a break, while protecting operators actively involved in the BEP. This protection is provided through assuring that no operator on a general leave of absence accrues seniority during the leave, but rather their seniority is "frozen" at the amount they have accrued up to the time of the leave. The BEP and OMC believe this is a reasonable balance of opportunity and protection.

Subpart 3, B., is changed to reflect that it is the operator's responsibility for the hiring of employees, not the SLA. As noted in the discussion of proposed language in Rulepart 3321.0100, STATUTORY AUTHORITY AND SCOPE OF RULES., the operator is not an employee of the SLA, and continuing with that theme, neither is his/her employee. While the SLA and OMC endorse the first consideration of another visually impaired or otherwise handicapped employee, it is first and foremost the responsibility of the employer-in this case the operator.

Old Subpart 3, D. is proposed deleted. This passage, while well intended, has never been applied evenly, if at all. The original motivation for such a passage was spawned by a concern that a new, naive operator may change their suppliers without a full knowledge of their business. That concern continues, but has not been a significant problem. When weighed against the fact that the provision as written applies to seasoned operators as well, if enforced, the only reasonable action is deletion.

Amended Subpart 3, D., reflects the fact that while still

responsible for acquisition of insurance, "purchase" may not be the correct term. This has resulted because funds the BEP has accrued from non-appropriated sources over the last several years have, with the approval of the OMC, been used for the purchase of individual liability insurance policies for operators. An operator may have any other policy for which they must pay for. There is no guarantee such policies will be purchased in this fashion in the future, and it is therefore necessary that operators continue to be responsible for acquisition which includes "purchase", should it be so necessary.

Workmen's compensation insurance is added to this section of the rule not because it is a new requirement, but rather, because this section discusses insurance and it was determined that not noting it might be less clear than the redundancy in noting the requirement. Operators are required under other sections of the rule and their contract to obtain such insurance, if applicable to them. See appendix, pp.62,67.

New Subpart 3, E., has been developed to assure that the SLA review all operator books and take those steps necessary to stimulate the operator to pay outstanding debts. The OMC has a very strong, clear concern that the reputation of blind business persons, and the BEP, not be unnecessarily tarnished through operator indebtedness and specifically requested this statement be included in the rule. Situations have occurred where such diligence to detail and action were lacking.

3321.1100 OPERATOR MANAGEMENT COMMITTEE

Subpart 2, E., is amended to set the minimum number of OMC meetings per year at four, rather that two. The OMC set this policy for themselves some years ago. While this is reasonable considering current subpart 2, F., which allows the OMC to establish by-laws for their operation, this expansion of the minimum number of meetings is reasonable insofaras for atleast the last five years this number of meetings has been necessary to deal with all matters referred to the OMC for discussion, review or action.

3321.1200 REVIEW OF AGENCY DECISIONS

Proposed changes in subpart 3., Hearing Procedures, are brought about by changes in Minnesota Statutes, comment by RSA, and certain personnel "title" changes. It is of note that there has never been a hearing in the history of the BEP.

Both in Item B. and original Item D. the term "administrator" or "state administrator" have been replaced with the term "director". This change is necessary and reasonable because the Minnesota Department of Employee Relations has classified the person in charge of matters related to SSB as the "director".

All other new language in subpart 3. has been requested by RSA in phone conversations followed up with submission to SSB of an RSA Program Instruction related to the subject matter. See appendix, pp.87-93. Their basic request is that the following procedural elements are necessary to be contained in state BEP

rules: Notice; Right to represented by counsel;Impartial presiding official; Right to present witnesses and cross examination; Decision on the record; Transcript of the proceeding; and Reasonable time limits for the total proceeding. See appendix, pp. 89-90.

While it may be argued that these elements are contained in statute or rule related to "Chapter 14", Contested Case Hearings, these documents are not readily available to operators. Because these ruleparts already contain provisions related to hearing procedures, it is reasonable that these necessary, requested procedural elements be re-stated herein.

Language is being deleted from the final item of this subpart because of changes in Minnesota Statutes. For many years there was statutory language which enabled an operator, when given an adverse decision, to request a three person appeal committee to review the proposed decision by the state administrator. That language was deleted from statute. See appendix, p. 35. In any event, there is still a three person arbitration panel available to the operator upon appealing the matter further to the secretary of the Department of Education. See subpart 4 of this rulepart and p.22-23 of the appendix.

Subpart 4 of this rulepart is amended to correctly reflect the changes made in the Code of Federal Regulations revised as of July 1, 1981. See appendix, pp. 13-31.

3321.1300 ACCESS TO PROGRAM AND FINANCIAL INFORMATION

This rulepart is modified to reflect recent changes in statute related to the access by the OMC of data which may be considered to be "private data on individuals". See appendix, p. 94. It is necessary to restate the statute here because this is the primary document used by operators in fulfilling their responsibilities as a part of BEP as well as understanding the overall operation of the BEP and how it may effect them as individuals. The language is reasonable as it properly conveys state law to the reader.

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minnesota Statutes, section 14.115, requires that an agency proposing rules consider methods for reducing the impact on small businesses, as so defined. The instant situation is somewhat unique.

This rule "regulates" the operation of a small, distinct group of legally blind persons operating small businesses providing services on primarily public property under a contract with the department. The rule does not apply to any other small or large business in the state. Federal regulation requires SSB to promulgate rules and regulations which are adequate to assure the effective conduct of the program and the operation of each facility in accordance with the federal rule as well as other federal and state laws. See appendix,, p.19.

Further, federal and state regulation require the Operator

Management Committee to participate with the state licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the program. See appendix, pp.23, 64. The OMC as well as a great number of vendors from across the state have been involved in the process. The OMC has approved these proposed rules. It should be noted that the Committee considered the necessity for and appropriateness of any proposed change as well as reviewing the whole rule.

When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses as defined in the statute, the agency shall consider the following methods for reducing the impact on small businesses:

The establishment of less stringent compliance or reporting requirements for small businesses.

As noted earlier, longstanding policies developed by the Program and the OMC have been folded into the proposed rules. No additional compliance or reporting requirements beyond those are included in the proposed rules. The OMC and the department believe the current reporting and compliance issues are necessary.

The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

New language in section 3321.0800 establishes a due date of the 25th of the month for the payment of funds set aside from vending stand proceeds. The rule already requires a due date for submission of operator books on the 10th of each month. The Committee felt the 25th was adequate. In any event, no penalty accrues to the operator unless the books or the payment of funds are submitted more than 30 days beyond the due date. The OMC and department agree on this issue.

The consolidation or simplification of compliance or reporting requirements for small businesses.

The compliance requirements are already familiar to all affected blind vendors. The compliance and reporting requirements are already minimal and any additional streamlining would only undermine the system.

The establishment of performance standards to replace design or operational standards required in the rule.

No design standards are required by this rule. All operational requirements are consistent with federal regulation and approved by the OMC and the Agency.

The exemption of small businesses from any and all requirements of the rule.

Exempting these small businesses from a rule that only applies to them is contrary to the federal rule requiring such regulation and is therefore inappropriate.

CONCLUSION

The Department of Jobs and Training recommends the adoption of these proposed rules.

5/29/90

Date

Charles E. Hamilton

CHARLES E. HAMILTON, Director
Business Enterprises Program
Services for the Blind
Department of Jobs and Training

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THE RANDOLPH-SHEPPARD ACT

AS AMENDED AND AS CODIFIED AT
CHAPTER 6A OF TITLE 20
OF THE U. S. CODE

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CHAPTER 6A--VENDING FACILITIES FOR BLIND IN FEDERAL BUILDINGS

Sec.

107. Operation of vending facilities authorized; preferences; regulations; justification for limitation on such operation.

107a. Surveys by Secretary of Health, Education, and Welfare; designating State licensing agencies; qualifications for license; preferences; selection of locations.

107b. Application for designation as State licensing agency; cooperation with Secretary; furnishing initial stock.

107b-1. Access to information with State licensing agencies; election and responsibilities of Committee of Blind Vendors.

107b-2. Standards, studies, and reports.

107b-3. Audit of nonappropriated fund activities.

107d. Expenditures for personal services, rent, printing, etc.; preference to blind persons.

107d-1. Grievances of blind licensees; hearing and arbitration; non-compliance by federal departments and agencies; complaints by state licensing agencies; arbitration.

107d-2. Arbitration--Notice and hearing.

107d-3. Vending machine income--Accrual to blind licensee and alternatively to state agency; ceiling on amount for individual licensee.

107d-4. Training programs for maximum vocational potential for blind.

107e. Definitions.

107f. Appropriations.

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§ 107. Operation of vending facilities authorized; preferences; regulations; justification for limitation on such operation

(a) For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this chapter shall be authorized to operate vending facilities on any Federal property.

(b) In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this chapter; and the Secretary, through the Commissioner, shall, after consultation with the Administrator of General Services and other heads of departments, agencies, or instrumentalities of the United States in control of the maintenance, operation, and protection of Federal property, prescribe regulations designed to assure that—

(1) the priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to section 107d—3 of this title to achieve and protect such priority), and

(2) wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.

Any limitation on the placement or operation of a vending facility based on a finding that such placement or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary, who shall determine whether such limitation is justified. A determination made by the Secretary pursuant to this provision shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination, along with supporting documentation, in the Federal Register.

§ 107a. Surveys by Secretary of Health, Education, and Welfare; designating State licensing agencies; qualifications for license; preferences; selection of locations

(a) The Secretary of Health, Education, and Welfare shall—

(1) insure that the Rehabilitation Services Administration is the principal agency for carrying out this chapter; and the Commissioner shall, within one hundred and eighty days after December 7, 1974, establish requirements for the uniform application of this chapter by each State agency designated under paragraph (5) of this subsection, including appropriate accounting procedures, policies on the selection and establishment of new vending facilities, distribution of income to blind vendors, and the use and control of set-aside funds under section 107b(3) of this title;

(2) Through the Commissioner, make annual surveys of concession vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal

property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service;

(3) Make surveys throughout the United States of industries with a view to obtaining information that will assist blind persons to obtain employment;

(4) Make available to the public, and especially to persons and organizations engaged in work for the blind, information obtained as a result of such surveys;

(5) Designate as provided in section 107b of this title the State agency for the blind in each State, or, in any State in which there is no such agency, some other public agency to issue licenses to blind persons who are citizens of the United States for the operating of vending facilities on Federal and other property in such State for the vending of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State licensing agency, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State; and

(6) Through the Commission, (A) conduct periodic evaluations of the program authorized by this chapter, including upward mobility and other training required by section 107d—4 of this title, and annually submit to the appropriate committees of Congress a report based on such evaluations, and (B) take such other steps, including the issuance of such rules and regulations, as may be necessary or desirable in carrying out the provisions of this chapter.

(b) The State licensing agency shall, in issuing each such license for the operation of a vending facility, give preference to blind persons who are in need of employment. Each such license shall be issued for an indefinite period but may be terminated by the State licensing agency if it is satisfied that the facility is not being operated in accordance with the rules and regulations prescribed by such licensing agency. Such licenses shall be issued only to applicants who are blind within the meaning of section 107e of this title.

(c) The State licensing agency designated by the Secretary is authorized, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the Federal property on which the facility is to be located but subject to regulations prescribed pursuant to section 107 of this title, to select a location for such facility and the type of facility to be provided.

(d)(1) After January 1, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, lease, or to otherwise occupy, in whole or in part, any building unless, after consultation with the head of such department, agency or instrumentality and the State licensing agency, it is determined by the Secretary that (A) such building includes a satisfactory site or space for the location and operation of a vending facility by a blind person, or (B) if a building is to be constructed, substantially altered, or renovated, or

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in the case of a building that is already occupied on such date by such department, agency, or instrumentality, is to be substantially altered or renovated for use by such department, agency, or instrumentality, the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind person. Each such department, agency, or instrumentality shall provide notice to the appropriate State licensing agency of its plans for occupation, acquisition, renovation, or relocation of a building adequate to permit such State agency to determine whether such building includes a satisfactory site or sites for a vending facility.

(2) The provisions of paragraph (1) shall not apply (A) when the Secretary and the State licensing agency determine that the number of people using the property is or will be insufficient to support a vending facility, or (B) to any privately owned building, any part of which is leased by any department, agency, or instrumentality of the United States and in which, (i) prior to the execution of such lease, the lessor or any of his tenants had in operation a restaurant or other food facility in a part of the building not included in such lease, and (ii) the operation of such a vending facility by a blind person would be in proximate and substantial direct competition with such restaurant or other food facility except that each such department, agency, and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.

(3) For the purposes of this subsection, the term "satisfactory site" means an area determined by the Secretary to have sufficient space, electrical and plumbing outlets, and such other facilities as the Secretary may by regulation prescribe, for the location and operation of a vending facility by a blind person.

(e) In any State having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act or the Rehabilitation Act of 1973, the State licensing agency designated under paragraph (5) of subsection (a) of this section shall be the State agency designated under section 721(a)(1)(A) of Title 29.

§ 107b. Application for designation as State licensing agency; cooperation with Secretary; furnishing initial stock

A State agency for the blind or other State agency desiring to be designated as the licensing agency shall, with the approval of the chief executive of the State, make application to the Secretary and agree —

(1) to cooperate with the Secretary in carrying out the purpose of this chapter;

(2) to provide for each licensed blind person such vending facility equipment, and adequate initial stock of suitable articles to be vended therefrom, as may be necessary: *Provided, however*, That such equipment and stock may be owned by the licensing agency for use of the blind, or by the blind individual to whom the license is issued: *And provided further*, That if ownership of such equipment is vested in

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the blind licensee, (A) the State licensing agency shall retain a first option to repurchase such equipment and (B) in the event such individual dies or for any other reason ceases to be a licensee or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency (for transfer to a successor licensee) but subject to an obligation on the part of the State licensing agency to pay to such individual (or to his estate) the fair value of his interest therein as later determined in accordance with regulations of the State licensing agency and after opportunity for a fair hearing;

(3) that if any funds are set aside, or caused to be set aside, from the net proceeds of the operation of the vending facilities such funds shall be set aside, or caused to be set aside, only to the extent necessary for and may be used only for the purposes of (A) maintenance and replacement of equipment, (B) the purchase of new equipment, (C) management services, (D) assuring a fair minimum return to operators of vending facilities, and (E) retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is determined by a majority vote of blind licensees licensed by such State agency, after such agency provides to each such licensee full information on all matters relevant to such proposed program, that funds under this paragraph shall be set aside for such purposes: *Provided, however*, That in no event shall the amount of such funds to be set aside from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary;

(4) to make such reports in such form and containing such information as the Secretary may from time to time require and to comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) to issue such regulations, consistent with the provisions of this chapter, as may be necessary for the operation of this program;

(6) to provide to any blind licensee dissatisfied with any action arising from the operation or administration of the vending facility program an opportunity for a fair hearing, and to agree to submit the grievances of any blind licensee not otherwise resolved by such hearing to arbitration as provided in section 107d—1 of this title.

§ 107b—1. Access to information with State licensing agencies; election and responsibilities of Committee of Blind Vendors

In addition to other requirements imposed in this title and in this chapter upon State licensing agencies, such agencies shall—

(1) provide to each blind licensee access to all relevant financial data, including quarterly and annual financial reports, on the operation of the State vending facility program;

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(2) conduct the biennial election of a Committee of Blind Vendors who shall be fully representative of all blind licensees in the State program, and

(3) insure that such committee's responsibilities include (A) participation, with the State agency, in major administrative decisions and policy and program development, (B) receiving grievances of blind licensees and serving as advocates for such licensees, (C) participation, with the State agency, in the development and administration of a transfer and promotion system for blind licensees, (D) participation, with the State agency, in developing training and retraining programs, and (E) sponsorship, with the assistance of the State agency, of meetings and instructional conferences for blind licensees.

§ 107b—2. Standards, studies, and reports

(a) The Secretary, through the Commissioner, after a period of study not to exceed six months following December 7, 1974, and after full consultation with, and full consideration of the views of, blind vendors and State licensing agencies, shall promulgate national standards for funds set aside pursuant to section 107b(3) of this title which include maximum and minimum amounts for such funds, and appropriate contributions, if any, to such funds by blind vendors.

(b)(1) The Secretary shall study the feasibility and desirability of establishing a nationally administered retirement, pension, and health insurance system for blind licensees, and such study shall include, but not be limited to, consideration of eligibility standards, amounts and sources of contributions, number of potential participants, total costs, and alternative forms of administration, including trust funds and revolving funds.

(2) The Secretary shall, within one year following December 7, 1974, complete the study required by paragraph (1) of this subsection and report his findings, together with any recommendations, to the President and the Congress.

(c) The Secretary shall, not later than September 30, 1975, complete an evaluation of the method of assigning vending machine income under section 107d—3(b)(1) of this title, including its effect on the growth of the program authorized by this chapter, and on the operation of nonappropriated fund activities, and within thirty days thereafter he shall report his findings, together with any recommendations, to the appropriate committees of the Congress.

(d) Each State licensing agency shall, within one year following December 7, 1974, submit to the Secretary a report, with appropriate supporting documentation, which shows the actions taken by such agency to meet the requirements of section 107a(a)(1) of this title.

§ 107b—3. Audit of nonappropriated fund activities

The Comptroller General is authorized to conduct regular and periodic audits of all nonappropriated fund activities which receive income from vending machines on Federal property, under such rules and regulations

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as he may prescribe. In the conduct of such audits he and his duly authorized representatives shall have access to any relevant books, documents, papers, accounts, and records of such activities as he deems necessary.

§ 107c. Repealed, Pub.L. 93-516, Title II, § 203, Dec. 7, 1974, 88 Stat. 1626

§ 107d. Expenditures for personal services, rent, printing, etc.; preference to blind persons

(a) The Secretary is authorized to make such expenditures out of any money appropriated therefor (including expenditures for personal services and rent at the seat of government and elsewhere, books of reference and periodicals, for printing and binding, and for traveling expenses) as he may deem necessary to carry out the provisions of this chapter.

(b) The Secretary shall, in employing such additional personnel as may be necessary, give preference to blind persons who are capable of discharging the required duties.

§ 107d—1. Grievances of blind licensees; hearing and arbitration; non-compliance by federal departments and agencies; complaints by state licensing agencies; arbitration

(a) Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to a State licensing agency a request for a full evidentiary hearing, which shall be provided by such agency in accordance with section 107b (6) of this title. If such blind licensee is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 107d—2 of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

(b) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States that has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of this chapter or any regulations issued thereunder (including a limitation on the placement or operation of a vending facility as described in section 107(b) of this title and the Secretary's determination thereon) such licensing agency may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 107d—2 of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

§ 107d—2. Arbitration—Notice and hearing

(a) Upon receipt of a complaint filed under section 107d—1 of this title, the Secretary shall convene an ad hoc arbitration panel as provided

in subsection (a) of this section. Such panel shall, in accordance with the provisions of subchapter II of chapter 5 of Title 5, give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as a final agency action for purposes of chapter 7 of such Title 5.

Composition of panel; designation of chairman; termination of violations

(b)(1) The arbitration panel convened by the Secretary to hear grievances of blind licensees shall be composed of three members appointed as follows:

(A) one individual designated by the State licensing agency;

(B) one individual designated by the blind licensee; and

(C) one individual, not employed by the State licensing agency or, where appropriate, its parent agency, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (1)(A), (B), or (C), the Secretary shall designate such member on behalf of such party.

(2) The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(A) one individual, designated by the State licensing agency;

(B) one individual, designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(C) one individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (2)(A), (B), or (C), the Secretary shall designate such member on behalf of such party. If the panel appointed pursuant to paragraph (2) finds that the acts or practices of any such department, agency, or instrumentality are in violation of this chapter, or any regulation issued thereunder, the head of any such department, agency, or instrumentality shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

Publication of decisions in Federal Register

(c) The decisions of a panel convened by the Secretary pursuant to this section shall be matters of public record and shall be published in the Federal Register.

Payment of costs by the Secretary

(d) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses he shall publish in the Federal Register.

§ 107d—3. Vending machine income—Accrual to blind licensee and alternatively to state agency; ceiling on amount for individual licensee

(a) In accordance with the provisions of subsection (b) of this section, vending machine income obtained from the operation of vending machines

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on Federal property shall accrue (1) to the blind licensee operating a vending facility on such property, or (2) in the event there is no blind licensee operating such facility on such property, to the State agency in whose State the Federal property is located, for the uses designated in subsection (c) of this section, except that with respect to income which accrues under clause (1) of this subsection, the Commissioner may prescribe regulations imposing a ceiling on income from such vending machines for an individual blind licensee. In the event such a ceiling is imposed, no blind licensee shall receive less vending machine income under such ceiling than he was receiving on January 1, 1974. No limitation shall be imposed on income from vending machines contributed to create a vending facility, which are maintained, serviced, or operated by a blind licensee. Any amounts received by a blind licensee that are in excess of the amount permitted to accrue to him under any ceiling imposed by the Commissioner shall be disbursed to the appropriate State agency under clause (2) of this subsection and shall be used by such agency in accordance with subsection (c) of this section.

Direct competition between vending machine and vending facility; proportion of accrued income from such vending machines for individual licensee

(b)(1) After January 1, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section. "Direct competition" as used in this section means the existence of any vending machines or facilities operated on the same premises as a blind vending facility except that vending machines or facilities operated in areas serving employees the majority of whom normally do not have direct access to the blind vending facility shall not be considered in direct competition with the blind vending facility. After January 1, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section, except that with respect to Federal property at which at least 50 per centum of the total hours worked on the premises occurs during periods other than normal working hours, 30 per centum of such income shall so accrue.

(2) The head of each department, agency, and instrumentality of the United States shall insure compliance with this section with respect to buildings, installations, and facilities under his control, and shall be responsible for collection of, and accounting for, such vending machine income.

Disposal of accrued vending machine income by state licensing agency

(c) All vending machine income which accrues to a State licensing agency pursuant to subsection (a) of this section shall be used to establish retirement or pension plans, for health insurance contributions, and for provision of paid sick leave and vacation time for blind licensees in such State, subject to a vote of blind licensees as provided under section 107b (3)(E) of this title. Any vending machine income remaining after application of the first sentence of this subsection shall be used for the pur-

poses specified in sections 107b(3)(A), (B), (C), and (D) of this title, and any assessment charged to blind licensees by a state licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

Income from vending machines in certain locations exempted

(d) Subsections (a) and (b)(1) of this section shall not apply to income from vending machines within retail sales outlets under the control of exchange or ships' stores systems authorized by Title 10, or to income from vending machines operated by the Veterans Canteen Service, or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

Regulations establishing priority for operation of cafeterias

(e) The Secretary, through the Commissioner, shall prescribe regulations to establish a priority for the operation of cafeterias on Federal property by blind licensees when he determines, on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise.

Existing arrangements more favorable to blind licensees unaffected

(f) This section shall not operate to preclude preexisting or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind licensees (1) receive a greater percentage or amount of vending machine income than that specified in subsection (b)(1) of this section, or (2) receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

Regulations for compliance

(g) The Secretary shall take such action and promulgate such regulations as he deems necessary to assure compliance with this section.

§ 107d—4. Training programs for maximum vocational potential for blind

The Commissioner shall insure, through promulgation of appropriate regulations, that uniform and effective training programs, including on-the-job training, are provided for blind individuals through services under the Rehabilitation Act of 1973. He shall further insure that State agencies provide programs for upward mobility (including further education and additional training or retraining for improved work opportunities) for all trainees under this chapter, and that follow-along services are provided to such trainees to assure that their maximum vocational potential is achieved.

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§ 107c. Definitions

As used in this chapter--

(1) "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select;

(2) "Commissioner" means the Commissioner of the Rehabilitation Services Administration;

(3) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States;

(4) "Secretary" means the Secretary of Health, Education, and Welfare;

(5) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia;

(6) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia;

(7) "vending facility" means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of the articles or services described in section 107a(a)(5) of this title and which may be operated by blind licensees; and

(8) "vending machine income" means receipts (other than those of a blind licensee) from vending machine operations on Federal property, after cost of goods sold (including reasonable service and maintenance costs), where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind licensee) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

§ 107c—1. Repealed. Pub.L. 93-516, Title II, § 203, Dec. 7, 1974, 88 Stat. 1626

§ 107d. Appropriations

There is authorized to be appropriated such sums as may be necessary for carrying out the provisions of this chapter.

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code of federal regulations

Education

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PART 395

Revised as of July 1, 1981

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PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

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395.38 Reports.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

SOURCE: 42 FR 15802, Mar. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980, and further redesignated at 46 FR 5417, Jan. 19, 1981.

Subpart A—Definitions

§ 395.1 Terms.

Unless otherwise indicated in this part, the terms below are defined as follows:

(a) "Act" means the Randolph-Sheppard Vending Stand Act (Pub. L. 74-732), as amended by Pub. L. 83-565 and Pub. L. 93-516, 20 U.S.C., ch. 6A, Sec 107.

(b) "Blind licensee" means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

(c) "Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined 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 widest diameter subtends an angle of no greater than 20°.

(d) "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) "Secretary" means the Secretary of the Rehabilitation Services Administration.

(f) "Direct competition" means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(g) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(h) "Individual location installation or facility" means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the Federal employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

(i) "License" means a written instrument issued by the State licensing agency to a blind person, authorizing such person to operate a vending facility on Federal or other property.

(j) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating,

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in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) "Nominee" means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) "Normal working hours" means an eight hour work period between the approximate hours of 8:00 a.m., to 6:00 p.m., Monday through Friday.

(n) "Other property" means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) "Permit" means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) "Program" means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) "Satisfactory site" means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

(r) "Secretary" means the Secretary of Education.

(s) "Set-aside funds" means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia.

(u) "State vocational rehabilitation agency" means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) "State licensing agency" means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) "Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

(y) "Vending machine", for the purpose of assigning vending machine income under this part, means a coin or currency operated machine which dispenses articles or services, except

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that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(z) "Vending machine income" means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) "Vendor" means a blind licensee who is operating a vending facility on Federal or other property.

(bb) "Vocational rehabilitation services" means those services as defined in § 1361.1(ee) (1) and (2) of this chapter.

Subpart B—The State Licensing Agency

§ 395.2 Application for designation as a State licensing agency; general.

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under Part 1361 of this chapter.

(b) Such application shall be:

(1) Submitted in writing to the Secretary;

(2) Approved by the chief executive of the State; and

(3) Transmitted over the signature of the administrator of the State agency making application.

§ 395.3 Application for designation as State licensing agency; content.

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nomi-

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nee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements;

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under § 395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

§ 395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

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(1) The State licensing agency; or
(2) Its nominee, subject to the conditions specified in § 395.15(b); or
(3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

(1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and

(2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§ 395.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State vocational rehabilitation agency under § 395.2, and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

§ 395.6 Vendor ownership of vending facilities.

(a) If a State licensing agency determines under § 395.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency's regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock;

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner's failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement;

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agrees to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing;

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein; and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor's ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a complaint with the Secretary under § 395.13 to request the convening of an ad hoc arbitration panel.

§ 395.7 The issuance and conditions of licenses.

(a) The State licensing agency shall establish in writing and maintain ob-

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jective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

(1) Blind;

(2) Citizens of the United States; and

(3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

§ 395.8 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under § 395.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, 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 vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency 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 vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

§ 395.9 The setting aside of funds by the State licensing agency.

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net

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proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under § 395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State's vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which

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procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

§ 395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, 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 a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

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§ 395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;

(2) Specify the type and extent of the services to be provided under such agreement;

(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;

(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and

(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which

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vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section, in which event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property *Provided* that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency or instrumentality of the United States based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the FEDERAL REGISTER along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98-249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§ 395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in

part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States, shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, "substantial alteration or renovation of a building" means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.

(c) The determination that a building contains a satisfactory site or sites under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by

the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accure to the State licensing agency which shall disburse such income to such blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating a vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency. The total amount of such income disbursed to such blind vendor shall not exceed the maximum

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amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of this section.

(i) The provisions of this section shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under Title 10 of the United States Code; to income from vending machines operated by the Veterans Canteen Service; or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

(j) The provisions of this section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind vendors or State licensing agencies may:

(1) Receive a greater percentage or amount of vending machine income than that specified in paragraphs (b), (c), and (d) of this section, or

(2) Receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

§ 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria

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may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

§ 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

§ 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or serv-

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ices as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§ 395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

§ 395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal

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under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

§ 395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

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CHAPTER 248

BLIND; EDUCATION, REHABILITATION

248.03 Free tuition at state university.
248.04 Blind student to receive expenses while at certain schools.
248.07 Commissioner of jobs and training, duties.
248.075 Blind-made goods and services, use by governmental agencies.
248.10 Council for the blind.
248.11 Recoupment of services and equipment.

248.01 [Repealed, 1976 c 271 s 98 subd 2]

248.02 [Repealed, 1976 c 271 s 98 subd 2]

248.03 FREE TUITION AT STATE UNIVERSITY.

Any resident of the state graduated from the Minnesota state academy for the blind, upon compliance with all other requirements, shall be entitled to pursue any course of study in the state university without expense for tuition; and the board of regents shall receive the resident into any department thereof.

History: *(4612) RL s 1935; 1941 c 332; 1986 c 444; 1987 c 384 art 1 s 55*

248.04 BLIND STUDENT TO RECEIVE EXPENSES WHILE AT CERTAIN SCHOOLS.

Any blind person who is, and for five years immediately preceding the making of an application for aid under this chapter has been, a resident of this state, who is a regularly enrolled student pursuing any course of study, profession, art, or science in any university, college, or conservatory of music approved by the board of directors of the Minnesota state academy for the blind, in the discretion and under direction of the board, may receive a sum or sums of money, not exceeding $300 in any one year, for the purpose of defraying necessary expenses, including those of a reader, while in attendance upon such university, college, or conservatory, such expenditures to be made from the appropriations for the current expenses of the Minnesota state academy for the blind. Not more than ten such blind persons shall receive such aid in any one year.

History: *(4613) 1915 c 307 s 1; 1929 c 367 s 1; 1941 c 332; 1986 c 444; 1987 c 384 art 1 s 55*

248.05 [Repealed, 1976 c 271 s 98 subd 2]

248.06 [Repealed, 1976 c 271 s 98 subd 2]

248.07 COMMISSIONER OF JOBS AND TRAINING, DUTIES.

Subdivision 1. **Cooperation.** It shall be the duty of the commissioner of jobs and training, referred to in this section and sections 248.10 and 248.11 as the commissioner, to develop and administer programs serving the needs of blind and visually handicapped persons and to cooperate with state and local boards and agencies both public and private. The commissioner shall create a distinct organizational unit to be known as services for the blind and visually handicapped, separate from the vocational rehabilitation unit and with its own activity budget, within the department of jobs and training to provide and coordinate services to the blind.

Subd. 2. **Statistics.** The commissioner shall collect statistics concerning blind persons including medical ophthalmological data, causes of blindness, opportunities for education, rehabilitation, training for employment, and any other information necessary to carry out the commissioner's duties and responsibilities with respect to blind and visually handicapped persons.

Subd. 3. **Special attention.** The commissioner shall give special attention to the

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cases of handicapped youth who are eligible to attend the Minnesota state academy for the blind, the Minnesota state academy for the deaf, or the public school classes for handicapped children, but are not in attendance thereat, or are not receiving adequate instruction elsewhere. The commissioner shall report all such cases to the school district of the individual's residence and to the state board of education.

Subd. 4. **Vocational training.** The commissioner shall either provide or assist blind and visually handicapped persons in obtaining vocational training and employment and shall aid such persons in obtaining services and benefits to which they may be entitled from public and private agencies. Any person who shall be entitled to training under this subdivision shall have the right to choose from available programs such training as in the opinion of the person would be suitable and practical in accordance with rules adopted by the commissioner under subdivision 14a.

Subd. 5. **Aids.** The commissioner shall further be empowered to aid the blind: (1) By home instruction and training; (2) by assisting them in securing tools, appliances, and supplies; (3) by any other practicable means of improving their social, economic, or educational condition; and (4) by providing to eligible persons, or purchasing for sale at cost plus handling charges, special materials and supplies needed by blind or visually handicapped persons that are difficult to obtain elsewhere. Equipment may be leased or sold under written rehabilitation plans at cost plus handling charges to persons who wish to lease or purchase them. Receipts under this subdivision are subject to section 268.0121, subdivision 5.

Subd. 6. [Repealed, 1949 c 22 s 1]

Subd. 7. **Blind, vending stands and machines on governmental property.** Notwithstanding any other law, for the rehabilitation of blind persons the commissioner shall have exclusive authority to establish and to operate vending stands and vending machines in all buildings and properties owned or rented exclusively by the state university or community college systems or by any department or agency of the state of Minnesota except the department of natural resources properties operated directly by the division of state parks and not subject to private leasing. The merchandise to be dispensed by such vending stands and machines may include nonalcoholic beverages, food, candies, tobacco, souvenirs, notions and related items. Such vending stands and vending machines herein authorized shall be operated on the same basis as other vending stands for the blind established and supervised by the commissioner under federal law. The commissioner shall waive this authority to displace any present private individual concessionaire in any state-owned or rented building or property who is operating under a contract with a specific renewal or termination date, until the renewal or termination date. With the consent of the governing body of a governmental subdivision of the state, the commissioner may establish and supervise vending stands and vending machines for the blind in any building or property exclusively owned or rented by the governmental subdivision.

Subd. 8. **Use of revolving fund, licenses for operation of vending machines.** The revolving fund created by Laws 1947, chapter 535, section 5, is continued as provided in this subdivision and shall be known as the revolving fund for vocational rehabilitation of the blind. It shall be used for the purchase of equipment and supplies for establishing and operating of vending stands by blind persons. All income, receipts, earnings, and federal grants due to the operation thereof shall also be paid into the fund. All interest earned on money accrued in the fund must be credited to the fund by the state treasurer. All equipment, supplies, and expenses for setting up these stands shall be paid for from the fund. Authority is hereby given to the commissioner to use the money available in the revolving fund that originated as operational charges to individuals licensed under this subdivision for the establishment, operation, and supervision of vending stands by blind persons for the following purposes: (1) purchase, upkeep and replacement of equipment; (2) expenses incidental to the setting up of new stands and improvement of old stands; (3) reimbursement under section 15.059 to individual blind vending operators for reasonable expenses incurred in attending supervisory meetings as called by the commissioner and other expenditures for management

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services consistent with federal law; and (4) purchase of fringe benefits for blind vending operators and their employees such as group health insurance, retirement program, vacation or sick leave assistance provided that the purchase of any fringe benefit is approved by a majority vote of blind vending operators licensed pursuant to this subdivision after the commissioner provides to each blind vending operator information on all matters relevant to the fringe benefits. Fringe benefits shall be paid only from assessments of operators for specific benefits, gifts to the fund for fringe benefit purposes, and vending income which is not assignable to an individual stand.

Money originally deposited as merchandise and supplies repayments by individuals licensed under this subdivision may be expended for initial and replacement stocks of supplies and merchandise. Money originally deposited from vending income on federal property must be spent consistent with federal law.

All other deposits may be used for the purchase of general liability insurance or any other expense related to the operation and supervision of vending stands.

The commissioner shall issue each license for the operation of a vending stand or vending machine for an indefinite period but may terminate any license in the manner provided. In granting licenses for new or vacated stands preference on the basis of seniority of experience in operating stands under the control of the commissioner shall be given to capable operators who are deemed competent to handle the enterprise under consideration. Application of this preference shall not prohibit the commissioner from selecting an operator from the community in which the stand is located.

Subd. 9. **Training of selected applicants.** Each applicant selected by the commissioner for a license to operate a vending stand or vending machine shall be given training in the operation and conduct of such vending stand or vending machine.

Subd. 10. **Revocation of licenses; hearing.** The commissioner shall not revoke any license except for good cause shown. An opportunity for a fair hearing shall be afforded any operator within 30 days after revocation of license.

Subd. 11. **Policy changes; notice and hearing.** Any major changes in policies made by the commissioner in the conduct of this program will be preceded by a public hearing. Each operator shall be given 30 days notice of such hearing.

Subd. 12. **Reimbursement out of state distribution of Braille and special materials.** The commissioner shall obtain reimbursement from other states for the estimated cost of providing radio signals, programming, and radio receivers for the blind and for production and handling of Braille books, audio tapes, and related services for the blind distributed by the department of jobs and training to users in such other states and may contract with the appropriate authorities of such states to effect such reimbursement. All money received hereunder shall be paid to the state treasurer and placed in the special revenue fund and is appropriated to the commissioner of jobs and training for the purposes of this subdivision.

Subd. 13. **Rehabilitation facilities.** From the funds appropriated for vocational rehabilitation of the blind and matching federal funds available for the purpose, the commissioner may make grants, upon such terms as the commissioner may determine, to public or nonprofit organizations for the establishment, maintenance or improvement of rehabilitation facilities or sheltered workshops for the blind.

Subd. 14. **Training of workers for rehabilitation of blind.** From funds provided by the state or the United States for the rehabilitation of blind persons, the commissioner may make provision for:

(1) specialized supplementary training of professional workers employed by services for the blind, which shall consist of selected courses of study designed to improve worker techniques in providing assistance with adjustment to blindness, guidance, training and vocational placement services to blind children and adults;

(2) the employment of student trainees enrolled in school programs. Such trainees to be employed on a part-time basis during the regular school term and on a full-time basis during the extra school term. Student trainees shall not be counted against the regular staff complement.

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Subd. 14a. **Rules.** The commissioner shall adopt rules to set standards for the provision of rehabilitative services to blind and visually handicapped persons. The rules shall, at a minimum, contain program definitions and set standards for basic eligibility, including financial need eligibility and definitions of legal blindness.

The rules shall provide for the development of formal rehabilitation plans for eligible clients and shall govern the provision of direct rehabilitative services to clients, including placement in training programs, and providing tools and equipment. In addition, the rules shall set standards for appeals filed under subdivision 15 and include specific requirements for timely responses by the agency.

Subd. 15. **Appeals from agency action.** An applicant for or recipient of rehabilitation service who is dissatisfied with an agency's action with regard to the furnishing or denial of services may file a request for administrative review and fair hearing in accordance with the Code of Federal Regulations, title 34, section 361.48, and rules adopted under subdivision 14a.

History: *(4616) 1913 c 488 s 1,2; 1917 c 346 s 3,4; 1923 c 336 s 1; 1941 c 332 s 1; 1955 c 303 s 1-6; 1957 c 693 s 1,2; 1961 c 67 s 1; 1965 c 321 s 1; 1965 c 692 s 1; 1969 c 399 s 1; 1969 c 903 s 1; 1969 c 1022 s 1; 1969 c 1129 art 3 s 1; 1976 c 54 s 1; 1976 c 163 s 51; 1976 c 239 s 78; 1976 c 271 s 77; 1982 c 395 s 1; 1984 c 516 s 1; 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12; 1986 c 337 s 3-12; 1986 c 444; 1Sp1986 c 3 art 1 s 27; 1987 c 365 s 20; 1987 c 384 art 2 s 1; 1988 c 703 art 1 s 19-21*

248.075 BLIND-MADE GOODS AND SERVICES, USE BY GOVERNMENTAL AGENCIES.

Any board, commission, officer, or employee of the state or a state agency, or of any county, city, town, school district, or other political subdivision or taxing district of the state, who purchases materials, supplies, goods, wares, merchandise, or produce, or procures services in behalf of the state or such state agency, political subdivision, or taxing district, shall purchase blind-made articles and products and procure blind labor, as each term is defined in section 325F.47, whenever they are available on terms at least as advantageous to the purchaser as are articles, products, and services available from other sources.

History: *1967 c 414 s 1; 1973 c 123 art 5 s 7*

248.08 [Repealed, 1986 c 337 s 14]

248.09 [Repealed, 1976 c 271 s 98 subd 2]

248.10 COUNCIL FOR THE BLIND.

Subdivision 1. **Membership.** The Minnesota council for the blind consists of seven members appointed by the commissioner. At least four of the council members must be blind or visually handicapped. Council members are appointed for four-year terms, except for the members first appointed, of whom three are appointed for a term ending December 31, 1990, two for terms ending December 31, 1989, and two for terms ending December 31, 1988.

Subd. 2. **Removal; vacancies; expiration.** The compensation, removal of members, and filling of vacancies on the council are as provided in section 15.0575. The council expires on June 30, 1993.

Subd. 3. **Duties.** The council shall:

(1) advise the commissioner on the qualifications for the director of services for the blind;

(2) advise the commissioner on the development of policies, programs, and services affecting the blind and visually impaired, and on the use of appropriate federal money;

(3) advise the commissioner on policies relating to eligibility determinations;

(4) create a public awareness of the special needs and potential of blind and visually impaired persons; and

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(5) provide the commissioner with a review of ongoing services, programs, and proposed legislation affecting the blind and visually impaired.

History: *ISp1985 c 14 art 9 s 14; 1988 c 629 s 48*

248.11 RECOUPMENT OF SERVICES AND EQUIPMENT.

Subdivision 1. **Erroneous payments.** If a recipient receives monetary assistance as a rehabilitation service from services for the blind and visually handicapped in excess of that to which the recipient is entitled by law, services for the blind and visually handicapped shall, as soon as it discovers the amount of the erroneous payment, notify the recipient to return the same in accordance with rules adopted by the commissioner. Unless the recipient files an appeal under section 248.07, subdivision 15, within 15 days after the notice to return is personally delivered to the recipient or mailed to the recipient's last known address, the determination of overpayment shall be considered final. If the recipient files a timely appeal, the determination shall not be considered final until the recipient's administrative appeal remedies are exhausted. Services for the blind and visually handicapped may recoup overpayments considered final under this subdivision by deducting the amount or a part of the overpayment from future monetary assistance payments to the recipient or by civil action in the name of the commissioner. Overpayments made more than three years prior to discovery of the error are not recoverable under this subdivision.

Subd. 2. **Recovery of equipment.** If a recipient retains equipment to which services for the blind and visually handicapped has title after the recipient's right to possess the equipment has expired, services for the blind and visually handicapped shall notify the recipient to return the same or execute a new lease to the equipment if the equipment is still necessary to the recipient's rehabilitation. Unless the recipient returns the equipment, executes and complies with a new lease to the equipment or appeals under section 248.07, subdivision 15 within 15 days after the notice to return is personally delivered to the recipient or mailed to the recipient's last known address, services for the blind and visually handicapped may institute a civil action to recover the equipment or the reasonable value of the equipment.

History: *1986 c 337 s 13*

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Chapter IV

Rehabilitative Services

DPW #79 RULES TO GOVERN ALL VENDING STANDS AND BUSINESS ENTERPRISES OF THE SERVICES FOR THE BLIND.

A. Legal Authority and Scope of Rules:

Pursuant to Minnesota Stat., 1953, Sec. 15.06, and Sec. 248.07 as amended by laws of 1955, Chap. 303, 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, hereinafter to be known as the licensing agency.

B. Issuance and Conditions of Licenses:

1. 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. 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 blind in accordance with the definition of blindness contained in the federal regulations issued pursuant to the Randolph-Sheppard Act; (b) be citizens of the United States; (c) be at least 21 years of age; (d) be certified 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. 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, 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.

The operator will be afforded an opportunity for a fair hearing before the termination of the license as described in Section G of this Rule.

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

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 for maintenance and repair of such equipment.

2. For furnishing each vending stand or business enterprise with adequate initial stocks of merchandise and supplies. Subsequent purchases 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 his 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:

The licensing agency will set aside or cause to be set aside from the monthly net profits of the operation of vending stands the following amounts:

1 on the 1st $100 or portion thereof, 4%
2 on the 2nd $100 or portion thereof, 6%
3 on the 3rd $100 or portion thereof, 8%
4 on the 4th $100 or portion thereof, 10%
5 on the 5th $100 or portion thereof, 12%
6 on the 6th $100 or portion thereof, 14%
7 on the 7th $100 or portion thereof, 16%
8 on the 8th $100 or portion thereof, 18%
9 on the 9th $100 or portion thereof, and any amounts over $1000, 20%

1. "Net Profits", as used herein, means the monthly cash receipts less merchandise purchases, general expenses, pay roll, and, for accounting purposes only, the previous month's set-aside charge. 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.

    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.

F. Policies Governing the Duties, Supervision, Transfer, and Participation of Operators:

Each operator shall be entitled to the net profit of the operation of the vending stand he 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. Each operator shall agree to:

    a. Perform faithfully and to the best of his 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.

f. Make no credit sales.

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

a. In the granting of licenses 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 does business in connection with the vending stand.

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

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 the 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.

H. Explanation to Operator of His 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 him.

1. 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 him and that he agrees to abide by them.

Effective Date - Sept. 7, 1961
(DPM #80 - #89 Reserved for future use)

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STATE OF MINNESOTA
SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED
DEPARTMENT OF PUBLIC WELFARE
1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104

RULES GOVERNING ALL VENDING STANDS AND BUSINESS ENTERPRISES

12 MCAR S 2.079

AMENDED AND EFFECTIVE NOVEMBER 2, 1981.

8-7-84
Rules converted
to a new format
new citation
MR 9570.0100 to
9570.1400
(MnRule)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
SERVICES FOR THE BLIND
BUSINESS ENTERPRISES PROGRAM

A-43

12 MCAR S 2.079 RULES GOVERNING ALL VENDING STANDS AND BUSINESS ENTERPRISES OF THE SERVICES FOR THE BLIND-ADOPTED NOVEMBER 2, 1981.

A. LEGAL AUTHORITY AND SCOPE OF RULES.

PURSUANT TO MINNESOTA STAT. SS 15.0412, SUBD. 3, AND 248.07, SUBD. 11, 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

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(1) NOT MORE THAN 20/200 CENTRAL VISUAL ACUITY IN THE BETTER EYE WITH CORRECTING LENSEN, 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,

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 INDEFINATE 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;

(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.

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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. <u>FURNISHING EQUIPMENT AND INITIAL STOCKS.</u>

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

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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 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 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 PAYROLL (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.

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. <u>DISTRIBUTION AND USE OF INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.</u>

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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 RELEVENT TO SUCH PURPOSES. ANY VENDING MACHINE INCOME NOT NECESSARY FOR SUCH PURPOSES SHALL BE USED FOR ONE OR MORE

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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

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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.

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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;

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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 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

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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 ABSENSE 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.

CHAPTER 9570
DEPARTMENT OF PUBLIC WELFARE
SOCIAL SERVICES FOR PHYSICALLY HANDICAPPED INDIVIDUALS

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VENDING STANDS AND BUSINESS ENTERPRISES OF SERVICES FOR THE BLIND

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VENDING STANDS AND BUSINESS ENTERPRISES OF SERVICES FOR THE BLIND

9570.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to Minnesota Statutes, section 248.07, subdivision 11, 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.

Statutory Authority: *MS s 248.07 subd 7*

9570.0200 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

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.

Statutory Authority: *MS s 248.07 subd 7*

9570.0700 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 salable 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.

Statutory Authority: *MS s 248.07 subd 7*

9570.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

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

A. on the first $100 or portion thereof, 2 percent;

B. on the second $100 or portion thereof, 4 percent;

C. on the third $100 or portion thereof, 6 percent;

D. on the fourth $100 or portion thereof, 8 percent;

E. on the fifth $100 or portion thereof, 10 percent;

F. on the sixth $100 or portion thereof, 12 percent;

G. on the seventh $100 or portion thereof, 14 percent; and

H. any amounts over $700, 16 percent.

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

Subp. 2. **Other conditions of funds.** 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.

Subp. 3. **Set-aside schedule.** The operator management committee, as defined in part 9570.1100, subpart 3, 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

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be provided on a continuing basis. Changes, when necessary, shall be by amendment to parts 9570.0100 to 9570.1400.

Statutory Authority: *MS s 248.07 subd 7*

9570.0900 DISTRIBUTION AND USE OF INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

Subpart 1. **Income accrual to operator.** 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.

Subp. 2. **Minimum income.** 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.

Subp. 3. **Combination of machines to make a stand.** 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.

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

Subp. 5. **Use of income retained by agency.** 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.

Statutory Authority: *MS s 248.07 subd 7*

9570.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

Subpart 1. **Net proceeds.** 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.

Subp. 2. **Operator duties.** 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. make all purchases of merchandise on a strictly cash basis unless exception is permitted in writing by the licensing agency;

E. make no credit sales; and

F. 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.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure 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 parts 9570.0100 to 9570.1400.

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 nonhandicapped 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.

Statutory Authority: *MS s 248.07 subd 7*

9570.1100 OPERATOR MANAGEMENT COMMITTEE.

Subpart 1. **Annual election for representatives.** The licensing agency and the elections subcommittee of the operator management committee will conduct an annual election for representatives to the operator management committee.

Subp. 2. **Representation, nominations, and terms.** 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 statewide for at-large representatives.

B. Elections will be by licensed operators in each district for their district and statewide for at-large representatives.

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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 subcommittees 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. Subcommittees will meet as necessary to carry on their functions.

F. The committee shall establish bylaws for the further rules, functioning, and guidance of the committee.

Subp. 3. **Purpose and function of committee.** 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.

Statutory Authority: *MS s 248.07 subd 7*

9570.1200 REVIEW OF AGENCY DECISIONS.

Subpart 1. **Written notice.** 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.

Subp. 2. **Informal review procedures.** 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.

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to Minnesota Statutes, chapter 14 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 Minnesota Statutes, section 248.07, subdivision 15, clause (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.

Subp. 4. **Arbitration panel.** 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 Code of Federal Regulations, title 45, section 1369.13 (1979).

Statutory Authority: *MS s 248.07 subd 7*

9570.1300 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.

Statutory Authority: *MS s 248.07 subd 7*

9570.1400 EXPLANATION TO OPERATOR OF 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 these parts will be furnished to each operator. The agreement between the licensing agency and the operator, consistent with the provisions of these parts and signed by the operator, will be the operator's attestation that the agreement and these parts have been read to the operator and that the operator agrees to abide by them.

Statutory Authority: *MS s 248.07 subd 7*

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CHAPTER 3321
DEPARTMENT OF JOBS AND TRAINING
SERVICES FOR THE BLIND

VENDING STANDS AND BUSINESS ENTERPRISES OF SERVICES FOR THE BLIND

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.
3321.0200 SELECTION OF STAND OPERATORS.
3321.0300 PERIOD OF LICENSE.
3321.0400 TERMINATION OF LICENSE.
3321.0500 OPERATOR AGREEMENTS.
3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.
3321.0700 RIGHT TO, TITLE TO, AND INTEREST IN THE VENDING STAND EQUIPMENT AND STOCKS.
3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.
3321.0900 DISTRIBUTION AND USE OF INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.
3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.
3321.1100 OPERATOR MANAGEMENT COMMITTEE.
3321.1200 REVIEW OF AGENCY DECISIONS.
3321.1300 ACCESS TO PROGRAM AND FINANCIAL INFORMATION.
3321.1400 EXPLANATION TO OPERATOR OF OPERATOR'S RESPONSIBILITIES AND PRIVILEGES.

VENDING STANDS AND BUSINESS ENTERPRISES OF SERVICES FOR THE BLIND

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to Minnesota Statutes, section 248.07, subdivision 11, the following rules are hereby issued by the commissioner of jobs and training to govern all vending stands and business enterprises established by the Services for the Blind, Department of Jobs and Training, for which the department 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.

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12*

3321.0200 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; and

C. be certified as qualified for the operation of a vending stand by the rehabilitation staff of the Services for the Blind, Department of Jobs and Training.

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12*

3321.0300 PERIOD OF LICENSE.

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:

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3321.0900 DISTRIBUTION AND USE OF INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

Subpart 1. **Income accrual to operator.** 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.

Subp. 2. **Minimum income.** 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.

Subp. 3. **Combination of machines to make a stand.** 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.

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

Subp. 5. **Use of income retained by agency.** 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.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

Subpart 1. **Net proceeds.** 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.

Subp. 2. **Operator duties.** 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. make all purchases of merchandise on a strictly cash basis unless exception is permitted in writing by the licensing agency;

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E. make no credit sales; and

F. 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.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure 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 parts 3321.0100 to 3321.1400.

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 nonhandicapped 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.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

Subpart 1. **Annual election for representatives.** The licensing agency and the elections subcommittee of the operator management committee will conduct an annual election for representatives to the operator management committee.

Subp. 2. **Representation, nominations, and terms.** 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 statewide for at-large representatives.

B. Elections will be by licensed operators in each district for their district and statewide 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 subcommittees 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. Subcommittees will meet as necessary to carry on their functions.

F. The committee shall establish bylaws for the further rules, functioning, and guidance of the committee.

Subp. 3. **Purpose and function of committee.** 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.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1200 REVIEW OF AGENCY DECISIONS.

Subpart 1. **Written notice.** 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.

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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.

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to Minnesota Statutes, chapter 14 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

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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 administrative law judge the state administrator (or, in the case of license revocation, the commissioner of jobs and training) 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 Minnesota Statutes, section 248.07, subdivision 15, clause (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.

Subp. 4. **Arbitration panel.** 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 Code of Federal Regulations, title 45, section 1369.13 (1979).

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 640 s 32; L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12*

3321.1300 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.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1400 EXPLANATION TO OPERATOR OF 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 these parts will be furnished to each operator. The agreement between the licensing agency and the operator, consistent with the provisions of these parts and signed by the operator, will be the operator's attestation that the agreement and these parts have been read to the operator and that the operator agrees to abide by them.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

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STATE OF MINNESOTA
DEPARTMENT OF JOBS AND TRAINING
SERVICES FOR THE BLIND
ST. PAUL, MINNESOTA

THIS AGREEMENT, _____,
BETWEEN THE STATE OF MINNESOTA, DEPARTMENT OF JOBS AND TRAINING, SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED, HEREINAFTER KNOWN AS THE STATE LICENSING AGENCY, AND _____,
LICENSED BY THE STATE LICENSING AGENCY AS A VENDING STAND OPERATOR, HEREINAFTER KNOWN AS THE OPERATOR, WITNESSETH:

WHEREAS, THE STATE LICENSING AGENCY HAS THE PRIVILEGE TO OPERATE A VENDING STAND IN THE _____
_____;

WHEREAS, THE STATE LICENSING AGENCY IS DESIROUS OF GRANTING THE OPERATOR, WHO IS A LEGALLY BLIND PERSON, THE OPPORTUNITY OF OPERATING A VENDING STAND;

WHEREAS, THE STATE LICENSING AGENCY IS AUTHORIZED BY LAW TO SECURE LOCATIONS, TO SELECT AND LICENSE SUITABLE OPERATORS, TO FURNISH EQUIPMENT AND INITIAL MERCHANDISE AND SUPPLIES, AND IS RESPONSIBLE FOR THE ADMINISTRATION AND SUPERVISION OF THE PROGRAM;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES HERETO THAT THE OPERATOR SHALL HAVE THE RIGHT TO CONDUCT SAID BUSINESS WITH THE UNDERSTANDING THAT THIS PRIVILEGE BE PERSONAL ONLY TO THE OPERATOR AND MAY BE TERMINATED FOR CAUSE AT ANY TIME BY THE STATE LICENSING AGENCY, PURSUANT TO THE RULES TO GOVERN ALL VENDING STANDS AND BUSINESS ENTERPRISES OF THE STATE LICENSING AGENCY, MINNESOTA RULES 3321.0100 - 3321.1400.

1. IN CONSIDERATION OF THE GRANTING OF THIS PRIVILEGE THE OPERATOR AGREES TO UNDERTAKE:

(A) TO DEVOTE HIS BEST ENERGIES AND FULL TIME TO THE CONDUCT OF THIS BUSINESS AND TO NOTIFY THE STATE LICENSING AGENCY

IN CASE OF SICKNESS OR INABILITY TO CONTINUE AND NOT TO ABANDON THE BUSINESS WITHOUT FIRST GIVING THIRTY (30) DAYS WRITTEN NOTICE TO THE STATE LICENSING AGENCY;

(B) TO KEEP SUCH BOOKS OF ACCOUNTS IN CONNECTION WITH SAID BUSINESS AS MAY BE PRESCRIBED BY THE STATE LICENSING AGENCY; TO SUBMIT SUCH BOOKS FOR EACH MONTH TO THE STATE LICENSING AGENCY NOT LATER THAN TEN (10) DAYS AFTER THE CLOSE OF SUCH MONTH; TO HAVE SUCH BOOKS UP-TO-DATE AND AVAILABLE FOR AUDIT BY THE STATE LICENSING AGENCY AT ALL TIMES;

(C) TO REMIT MONTHLY TO THE STATE LICENSING AGENCY FROM THE PROCEEDS OF THE BUSINESS THE AMOUNT SET ASIDE BY THE STATE LICENSING AGENCY FROM THE PROCEEDS OF THE BUSINESS THE AMOUNT SET ASIDE BY THE STATE LICENSING AGENCY PURSUANT TO THE RULES TO GOVERN ALL VENDING STANDS AND BUSINESS ENTERPRISES OF THE STATE LICENSING AGENCY, MINNESOTA RULES 3321.0100 - 3321.1400;

(D) TO KEEP AN ACCURATE RECORD OF ALL MONEY WITHDRAWN FOR PERSONAL USE WHICH SHALL IN NO CASE EXCEED THE NET PROFIT OF THE PRECEDING MONTH EXCEPT UPON WRITTEN CONSENT OF THE STATE LICENSING AGENCY;

(E) TO CONDUCT THE BUSINESSS AT ALL TIMES IN ACCORDANCE WITH RULES TO GOVERN ALL VENDING STANDS AND BUSINESS ENTERPRISES OF THE STATE LICENSING AGENCY, MINNESOTA RULES 3321.0100 - 3321.1400, AND ALSO TO CONDUCT THE BUSINESS IN ACCORDANCE WITH THE PERMIT OR CONTRACT GRANTING THE STATE LICENSING AGENCY THE AUTHORITY TO ESTABLISH THIS VENDING STAND.

(F) TO BE BONDED FOR SUCH AMOUNT AS THE STATE LICENSING AGENCY MAY PRESCRIBE;

(G) TO COMPLY WITH THE PROVISIONS OF THE SOCIAL SECURITY ACT AND OTHER LAWS RELATING TO SELF-EMPLOYED PERSONS AND EMPLOYERS.

2. THE OPERATOR WILL REIMBURSE THE STATE LICENSING AGENCY FOR THE INITIAL EXPENDITURES FOR MERCHANDISE AND SUPPLIES BY

MONTHLY PAYMENTS EXTENDED OVER A THREE-YEAR PERIOD OR SUCH LONGER PERIODS AS THE STATE LICENSING AGENCY MAY PRESCRIBE IN EMERGENCY CASES. UPON TERMINATION OF THIS AGREEMENT, THE STATE LICENSING AGENCY AGREES TO PURCHASE AT COST PRICE ALL SALEABLE MERCHANDISE, AND AT AN AMORTIZED PRICE ALL SUPPLIES REMAINING IN THE STAND; PROVIDED THAT ANY DELIQUENCY IN THE OPERATOR'S ACCOUNTS WITH THE STATE LICENSING AGENCY SHALL BE DEDUCTED FROM THE TOTAL PURCHASE PRICE.

3. IT IS FURTHER DISTINCTLY UNDERSTOOD THAT THE OPERATOR, AS AN OPERATOR OF A STATE LICENSING AGENCY VENDING STAND, IS AN INDEPENDENT BUSINESS PERSON, UNDER THE SUPERVISION OF THE STATE LICENSING AGENCY, AND IS NOT AN EMPLOYEE OF THE STATE OF MINNESOTA OR THE STATE LICENSING AGENCY. THE OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF MINNESOTA, ITS OFFICERS, OR AGENTS, FOR ANY ACTS OR OMISSIONS OF SAID OPERATOR THAT MAY RESULT IN HIS LIABILITY TO THIRD PARTIES, AND THE STATE SHALL NOT BE LIABLE FOR ANY NEGLIGENCE OF THE OPERATOR BASED ON ANY THEORY OF LIABILITY.

4. THIS AGREEMENT SUPERSEDES ANY PREVIOUS AGREEMENT ENTERED INTO BY THE STATE LICENSING AGENCY AND THE OPERATOR, EITHER WRITTEN OR ORAL. SHOULD ANY AMENDMENTS IN THE LAW OR THE RULES OF THE STATE LICENSING AGENCY CONFLICT WITH THIS AGREEMENT, THE OPERATOR AGREES TO ABIDE BY THE AMENDED LAW AND/OR RULES AND TO SIGN A NEW AGREEMENT WITH THE STATE LICENSING AGENCY AT THAT TIME.

IN WITNESS WHEREOF, HAVING READ OR HEARD READ THIS AGREEMENT, THE RULES TO GOVERN ALL VENDING STANDS AND BUSINESS ENTERPRISES ESTABLISHED BY THE STATE LICENSING AGENCY, AND THE PERMIT OR CONTRACT GRANTING THE STATE LICENSING AGENCY THE AUTHORITY TO ESTABLISH THIS VENDING STAND OR OTHER DOCUMENTS PERTINENT TO THE OPERATION OF THIS VENDING STAND, IF ANY [SEE ATTACHMENT(S)], THE PARTIES HEREUNTO SUBSCRIBED THEIR NAMES.

VENDING STAND OPERATOR
DATE-

DIRECTOR, BUSINESS ENTERPRISES PROGRAM
SERVICES FOR THE BLIND AND VISUALLY
HANDICAPPED-DATE

IN PRESENCE OF:

COMMISSIONER OF ADMINISTRATION-DATE

APPROVED AS TO FORM AND
EXECUTION

COMMISSIONER OF FINANCE-DATE

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

BY
SPECIAL ASSISTANT ATTORNEY
GENERAL

FORM REVISED 10/3/87

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MINNESOTA DEPARTMENT OF
Jobs and Training
Division of Rehabilitation Services

Services for the Blind and Visually Handicapped
1745 University Avenue
St. Paul, Minnesota 55104

BUSINESS ENTERPRISES PROGRAM FOR THE BLIND
PROGRAM POLICIES

EFFECTIVE DATE AUGUST 18, 1977
BY ACTION OF THE OPERATOR MANAGEMENT COMMITTEE

THIS POLICY BOOKLET WILL BE UPDATED, AMENDED OR CORRECTED FROM TIME TO TIME IN THE FUTURE. PLEASE KEEP THIS COPY IN YOUR PERMANENT FILE FOR REFERENCE.

UP-DATE: MAY, 1986

QUAL OPPORTUNITY EMPLOYER

BUSINESS ENTERPRISES PROGRAM FOR THE BLIND
PROGRAM POLICIES

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- SECTION 1. LEGAL AUTHORITY
- SECTION 2. POLICY AMENDMENTS

ARTICLE II - RECOGNITION
- SECTION 1. OPERATOR ASSOCIATION
- SECTION 2. OPERATOR MANAGEMENT COMMITTEE

ARTICLE III - NON-DISCRIMINATION
- SECTION 1. OPERATORS
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ARTICLE IV - VACATION

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- SECTION 1. MEDICAL LEAVE
- SECTION 2. SIX MONTH LEAVE
- SECTION 3. LONG TERM LEAVE
- SECTION 4. EMERGENCY EXTENSION

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- SECTION 1. OPERATORS
- SECTION 2. TEMPORARY OPERATORS
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ARTICLE VIII - OPERATOR TRANSFERS
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SECTION 2. OPERATOR USE OF EQUIPMENT
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ARTICLE XIII - IMPROVEMENT IN VISION

PREAMBLE

SECTION 1. THIS DOCUMENT SHALL BE THE FORMAT IN WHICH TO ISSUE AND PUBLISH POLICIES FOR THE BUSINESS ENTERPRISES PROGRAM FOR THE BLIND WHICH WILL SUPPLEMENT, AND WHICH MUST CONFORM TO THE FEDERAL AND STATE LAWS AND THE FORMAL RULES OF THIS PROGRAM.

THE RANDOLPH-SHEPPARD ACT AS AMENDED DECEMBER, 1975
FEDERAL REGULATIONS CHAPTER XIII OF TITLE 34, PART 395
REVISED JULY 1, 1981.
MINNESOTA LAWS CHAPTER 248.07
MINNESOTA RULES 9570.0100-1400
EFFECTIVE NOVEMBER 2, 1981.

SECTION 2. ADDITIONS, DELETIONS, CHANGES TO THESE POLICIES SHALL BE NEGOTIATED AND PROCESSED BETWEEN THE BUSINESS ENTERPRISES PROGRAM AND THE OPERATOR MANAGEMENT COMMITTEE REPRESENTING ALL OPERATORS IN THE PROGRAM.

NOTICE OF PROPOSED CHANGES SHALL BE MAILED TO ALL OPERATORS WHO WILL BE GIVEN A CHANCE TO RESPOND OR REACT. WHEN THE FINAL DRAFT OF CHANGES HAS BEEN MADE, A MINIMUM OF 30 DAYS NOTICE MUST BE GIVEN TO ALL OPERATORS BEFORE BECOMING EFFECTIVE.

ARTICLE II
RECOGNITION

SECTION 1. <u>OPERATOR ASSOCIATION</u>. THE BUSINESS ENTERPRISES STAFF RECOGNIZED THE RIGHT OF THE OPERATORS TO FORM THEIR OWN ASSOCIATION, <u>THE MINNESOTA ASSOCIATION OF VENDING FACILITY OPERATORS</u>. THE STAFF, HOWEVER, WILL <u>NOT</u> RECOGNIZE THE "CLOSED SHOP" PRINCIPLE, IN THAT EVERY OPERATOR MUST BELONG TO THE ASSOCIATION. MEMBERSHIP MUST BE BY CHOICE.

SECTION 2. <u>OPERATOR MANAGEMENT COMMITTEE</u>. THIS COMMITTEE WHICH FUNCTIONED FOR MANY YEARS UNDER THE TITLE OF "ADVISORY" WILL NOW BE TITLED "OPERATOR MANAGEMENT COMMITTEE" AND FUNCTION AS PER FEDERAL LAW (R.S. 107B(2) AND (3)) AND PURSUANT FEDERAL REGULATIONS (PARA. 395.14).

CONCLUDED BY THE LICENSING AGEN AND THE ELECTIONS SUB-COMMITTEE, AS PER ARTICLE V OF THE BY-LAWS FOR THE OPERATION OF THE OPERATOR MANAGEMENT COMMITTEE:

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A. NOMINATIONS WILL BE SOLICITED FOR ONE REPRESENTATIVE FOR EACH DISTRICT:
   1. DISTRICT #1 - ST. PAUL
   2. DISTRICT #2 - MINNEAPOLIS
   3. DISTRICT #3 - TWIN CITIES SPECIAL
   4. DISTRICT #4 - NORTHERN MINNESOTA
   5. DISTRICT #5 - SOUTHERN MINNESOTA
   6. DISTRICT #6 - WESTERN MINNESOTA

B. IN ADDITION, NOMINATIONS WILL BE SOLICITED FOR TWO REPRESENTATIVES AT LARGE. THE PURPOSE OF THESE REPRESENTATIVES IS TO ATTEMPT TO ASSURE PROPORTIONAL REPRESENTATION OF TYPE OF VENDING STAND, AND OF FEDERAL AND OTHER PROPERTY.

C. ELECTIONS SHALL BE CONDUCTED BY MAIL BALLOT TO LICENSED OPERATORS.

D. EACH DISTRICT WILL NOMINATE AND ELECT ITS OWN REPRESENTATIVE EXCLUSIVELY, BY MAJORITY VOTE.

E. ALL LICENSED OPERATORS STATE-WIDE ARE ELIGIBLE FOR NOMINATION AND WILL VOTE ON THE AT-LARGE REPRESENTATIVES, ELECTING BY MAJORITY VOTE.

F. THE TERM OF OFFICE SHALL BE TWO YEARS, WITH A LIMIT OF TWO SUCCESSIVE TERMS. TERMS OF OFFICE SHALL BE STAGGERED SO THAT FIFTY PERCENT OF THE COMMITTEE SHALL STAND FOR ELECTION EACH YEAR.

G. THE ELECTIONS SUB-COMMITTEE SHALL APPOINT A MEMBER TO FILL THE UNEXPIRED TERM OF A VACANCY.

H. A MEMBER TRANSFERRING TO A NEW DISTRICT WILL CONTINUE TO REPRESENT THE OLD DISTRICT FOR HIS TERM OF OFFICE.

J. ELECTIONS SHALL BE CONDUCTED IN NOVEMBER OF EACH YEAR, WITH TERMS BEGINNING JANUARY 1ST.

ARTICLE II SECTION 2 EFFECTIVE JANUARY 1979.

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SECTION 1. THE ADMINISTRATION AND SUPERVISION OF THIS PROGRAM - SHALL BE APPLIED TO ALL OPERATORS AND RELIEF OPERATORS OF THIS PROGRAM WITHOUT DISCRIMINATION AS TO SEX, MARITAL STATUS, RACE, COLOR, CREED, DISABILITY, NATIONAL ORIGIN, POLITICAL AFFILIATION, OR AGE.

SECTION 2. APPLICANTS FOR THIS PROGRAM - SHALL BE CONSIDERED WITHOUT DISCRIMINATION AS LISTED IN SECTION 1. THE ONLY CONSIDERATION SHALL BE THE LEGAL AND PHYSICAL LIMITATION OF THE APPLICANT AND HIS OR HER QUALIFICATION FOR SUCH TYPE OF EMPLOYMENT.

THE LEGAL QUALIFICATIONS ARE: (1) BLIND (2) CITIZEN OF THE UNITED STATES (3) CERTIFIED BY THE STATE VOCATION REHABILITATION AGENCY AS QUALIFIED TO OPERATE A VENDING FACILITY (4) PREFERENCE TO BLIND PERSONS IN NEED OF EMPLOYMENT.

ARTICLE IV
VACATION

SECTION 1. THERE IS NO LIMIT AS TO THE AMOUNT OF VACATION AN OPERATOR CAN TAKE IN A YEAR. HE MUST, HOWEVER, ATTEMPT TO HIRE A HANDICAPPED PERSON AS SUBSTITUTE IN ACCORDANCE WITH MINNESOTA RULES 9570.1000, SUBP 3.B.

ARTICLE V
SICK LEAVE

SECTION 1. MEDICAL LEAVE POLICY. IN THE EVENT AN OPERATOR MUST BE ABSENT FROM HIS ENTERPRISE FOR MEDICAL REASONS, THE FOLLOWING PROCEDURES SHALL APPLY:

SECTION 2. PROVISION 1. THE OPERATOR SHALL HAVE THE RIGHT TO EMPLOY A QUALIFIED PERSON TO OPERATE HIS ENTERPRISE IN HIS ABSENCE.

ATTEMPTS SHALL BE MADE TO LOCATE A HANDICAPPED INDIVIDUAL BEFORE THE EMPLOYMENT OF A NON-HANDICAPPED PERSON.

THE ENTERPRISE ON A FULL SERVICE BASIS.

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THE EMPLOYEE SHALL OPERATE THIS ENTERPRISE IN A MANNER THAT ADHERES TO ALL EXISTING RULES AND REGULATIONS OF THE STATE AGENCY AND ANY EXISTING RULES AND REGULATIONS OF THE PARTICULAR ENTERPRISE.

WAGES PAID THE EMPLOYEE SHALL BE A MATTER NEGOTIATED BETWEEN THE OPERATOR AND THE EMPLOYEE.

THE TERMS OF PROVISION I SHALL APPLY FOR A PERIOD OF NOT MORE THAN 6 MONTHS, AFTER WHICH THE TERMS OF PROVISION II SHALL APPLY.

SECTION 3. PROVISION II. IF THE ORIGINAL OPERATOR OF THE ENTERPRISE IS UNABLE TO RETURN TO WORK AFTER THE ELAPSED TIME STATED IN PROVISION I, THE STATE AGENCY AND THE OPERATOR MANAGEMENT COMMITTEE SHALL MEET AS SOON AS POSSIBLE:

1. REVIEW THE WRITTEN REQUEST SUBMITTED BY THE OPERATOR FOR A MEDICAL LEAVE OF ABSENCE.
2. REVIEW THE DOCTOR'S STATEMENT SUBMITTED BY THE OPERATOR.
3. GRANT A MEDICAL LEAVE UP TO A MAXIMUM OF 365 DAYS.
4. SELECT FROM THE ELIGIBILITY LIST, A TEMPORARY OPERATOR FOR THIS ENTERPRISE.

THE STATE AGENCY SHALL TAKE A COMPLETE INVENTORY OF THE ENTERPRISE BEFORE INSTALLING THE TEMPORARY OPERATOR. THE ORIGINAL OPERATOR SHALL BE REIMBURSED FOR THE FULL AMOUNT OF INVENTORY OWNED. FULL PAYMENT SHALL BE MADE AS SOON AS POSSIBLE AFTER THE TIME OF THE INVENTORY.

ON BEING INSTALLED, THE TEMPORARY OPERATOR SHALL ASSUME ALL RESPONSIBILITIES AND OBLIGATIONS FOR THE ENTERPRISE. HE SHALL ALSO RECEIVE ALL PROFITS DERIVED THEREFROM, SUBJECT TO STANDARD AGENCY PROCEDURE.

AT ANY TIME AFTER THE INSTALLATION OF THE TEMPORARY OPERATOR, THE ORIGINAL OPERATOR RECOVERS AND IS ABLE TO RESUME OPERATION OF THE ENTERPRISE, HE OR SHE SHALL HAVE THE RIGHT TO DO SO.

WRITING OF HIS OR HER INTENT TO ...UME OPERATION AND PROVIDE A MEDICAL REPORT FROM HIS OR HER DOCTOR.

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THE ORIGINAL OPERATOR SHALL ALLOW THE STATE AGENCY AND THE TEMPORARY OPERATOR A REASONABLE TIME (A MAXIMUM OR 30 DAYS) TO PHASE OUT THE TEMPORARY OPERATION OF THE ENTERPRISE.

SECTION 4. PROVISION III. IF THE ORIGINAL OPERATOR HAS NOT RECOVERED FROM THE MEDICAL DISABILITY BY THE COMPLETED TERM OF THE APPROVED MEDICAL LEAVE OF ABSENCE, THE FOLLOWING STEPS SHALL BE TAKEN:

1. THE STATE AGENCY AND THE OPERATOR MANAGEMENT COMMITTEE SHALL MEET; THEY SHALL MAKE A DETERMINATION BASED ON MEDICAL AND ANY OTHYER PERTINENT INFORMATION AS TO THE ORIGINAL OPERATOR'S CLAIM TO THE ENTERPRISE.
2. IF, IN THE OPINION OF THE STATE AGENCY AND THE OPERATOR MANAGEMENT COMMITTEE THERE IS A STRONG PROBABILITY THAT THE ORIGINAL OPERATOR SHALL BE ABLE TO RESUME OPERATION IN A VERY SHORT TIME, AN ADDITIONAL GRACE PERIOD OF UP TO 60 DAYS MAY BE GRANTED.
3. IF THE OPINION IS THAT THE ORIGINAL OPERATOR WILL NOT BE ABLE TO RESUME OPERATION, OR THE GRACE PERIOD IS GRANTED AND THE 60 DAYS ARE EXHAUSTED AND THE ORIGINAL OPERATOR IS STILL UNABLE TO RESUME OPERATION OF THE ENTERPRISE, THE ORIGINAL OPERATOR SHALL FORFEIT ALL CLAIM TO THE ENTERPRISE. THIS ENTERPRISE SHALL THEN BE PLACED ON OPEN BID BY THE STATE AGENCY.
4. IF THE OPERATOR IS FORCED TO FORFEIT ALL CLAIM TO HIS ENTERPRISE, THE STATE AGENCY AND THE OPERATOR MANAGEMENT COMMITTEE SHALL MEET AND MAKE A DETERMINATION ON THE PERTINENT INFORMATION AVAILABLE, AS TO THE FUTURE STATUS OF THE OPERATOR IN THE BUSINESS ENTERPRISES PROGRAM AND THE SENIORITY LIST. THE GENERAL GUIDE TO BE USED WOULD BE THAT ANY OPERATOR WHO DOES NOT WORK FOR A TWENTY-FOUR MONTH PERIOD SHOULD BE REMOVED FROM THE SENIORITY LIST. FLEXIBILITY IN APPLICATION OF THIS GUIDELINE WILL BE AT THE DISCRETION OF THE OPERATOR MANAGEMENT COMMITTEE AND STATE AGENCY. THE OPERATOR WILL BE NOTIFIED OF SUCH DECISION

AND INFORMED OF HIS RIGHT TO APPEAL THE DECISION AS PER MINNESOTA RULES 9570.1200, REVIEW OF AGENCY DECISIONS.

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ARTICLE VI
RETIREMENT

SECTION 1. THERE IS NO MANDATORY RETIREMENT AGE FOR OPERATORS IN THIS PROGRAM.

ARTICLE VII
SENIORITY

SECTION 1. OPERATORS. THE SENIORITY SYSTEM IS MANDATED BY MINNESOTA STATUTES 248.07 SUBD. 8. THE POLICY WAS APPROVED EFFECTIVE 9-24-77 THAT EACH PERSON ON THE PERMANENT SENIORITY LIST MUST WORK EITHER AS AN OPERATOR, OR AS A RELIEF OPERATOR OR TAKE ADDITIONAL TRAINING, A MINIMUM OF TWO WEEKS PER YEAR TO REMAIN ON THE SENIORITY LIST.

SECTION 2. TEMPORARY OPERATOR. A TEMPORARY OPERATOR, AFTER SATISFACTORY COMPLETION OF TRAINING AND AT HIS REQUEST, WILL BE PLACED ON AN ELIGIBILITY LIST, AND WILL BE CONSIDERED FOR PLACEMENT ON AN ENTERPRISE BASED UPON SENIORITY ON THE ELIGIBILITY LIST. EACH PERSON ON THE ELIGIBILITY LIST MUST WORK AS A RELIEF OPERATOR OR TAKE ADDITIONAL TRAINING, A MINIMUM OF TWO WEEKS PER YEAR, TO REMAIN ON THIS LIST.

SECTION 3. A LIST OF PERSONS WILLING TO DO RELIEF WORK WILL BE MAINTAINED. THESE PERSONS WILL SHARE RELIEF WORK WITH PERSONS ON THE ELIGIBILITY LIST. ANYONE WISHING TO SWITCH TO THE ELIGIBILITY LIST MUST HAVE SATISFACTORILY COMPLETED THE APPROPRIATE TRAINING AND MADE OFFICIAL APPLICATION FOR THE ELIGIBILITY LIST.

ARTICLE VIII
OPERATOR TRANSFERS

SECTION 1. WHEN AN OPERATOR TRANSFERS TO ANOTHER ENTERPRISE, HE IS PAID FOR HIS SUPPLIES INVENTORY BALANCE ONLY WHEN THERE IS A BALANCE AFTER DEDUCTING THE BEGINNING INVENTORY OF THE NEW ENTERPRISE.

SECTION 2. ONE NEGATIVE FACTOR CONSIDERED BY THE PROGRAM IN REJECTING AN OPERATOR'S TRANSFER TO ANOTHER ENTERPRISE IS HIS OR HER RECORD OF PROMPTNESS OF SUBMITTING THE MONTHLY REPORTS, AND THE PROMPTNESS OF MONTHLY PAYMENTS ON THE OPERATOR'S ACCOUNTS WITH THE PROGRAM. A COPY OF EACH OPERATOR'S ACCOUNTS WITH THE PROGRAM WILL BE GIVEN TO EACH OPERATOR QUARTERLY, OR AT LEAST A MINIMUM OF ONCE A YEAR.

SECTION 3. ALL BLIND PERSONS WHO WISH TO ENTER THIS PROGRAM, MUST TAKE TRAINING, REGARDLESS OF PREVIOUS EXPERIENCE. WHEN TRAINEES HAVE SATISFACTORILY COMPLETED TRAINING, THEY ARE PLACED ON THE ELIGIBLE LIST. WHEN THEY ARE FINALLY PLACED ON THEIR FIRST ENTERPRISE, THEY ARE LICENSED BY THE PROGRAM AND ARE PROVIDED A LICENSED CERTIFICATE INDICATING THIS DATE AS THEIR SENIORITY DATE.

SECTION 4. VENDING MACHINE TRAINING IS PART OF THE TOTAL TRAINING PACKAGE. A TRAINEE MAY BE LICENSED TO OPERATE AN ENTERPRISE IN THE PROGRAM WITHOUT TAKING VENDING MACHINE TRAINING. HOWEVER, NO OPERATOR CAN BE PLACED OR TRANSFERRED TO A VENDING MACHINE ENTERPRISE WITHOUT FIRST TAKING AND SATISFACTORILY COMPLETING VENDING MACHINE TRAINING.

SECTION 5. NO OPERATOR CAN TRANSFER TO ANOTHER ENTERPRISE AND THEN BID BACK INTO THE ENTERPRISE HE/SHE JUST LEFT IN THE SAME BIDDING SEQUENCE.

ARTICLE VIII - EFFECTIVE 11/1/83

ARTICLE IX
INSURANCE, LIABILITY AND RESPONSIBILITY

SECTION 1. IT IS RECOGNIZED THAT ALL EQUIPMENT IN THIS PROGRAM HAS BEEN PURCHASED AND REMAINS THE PROPERTY OF THE STATE OF MINNESOTA. EACH OPERATOR IS UNDER A CONTRACT TO THIS PROGRAM BUT IS NOT A STATE EMPLOYEE. THE OPERATOR IS CONSIDERED AN INDEPENDENT CONCESSIONAIRE.

SECTION 2. EACH OPERATOR HAS THE RESPONSIBILITY TO PROTECT THE EQUIPMENT ASSIGNED TO HIM. HE CANNOT SELL, TRADE, ALTER, OR JUNK IT WITHOUT EXPRESS WRITTEN PERMISSION OF THE BUSINESS ENTERPRISES PROGRAM STAFF.

SECTION 3. EACH OPERATOR HAS LIMITED EMERGENCY AUTHORITY TO CALL A SERVICE REPAIR MAN, AND THEN ONLY AT THE PREVIOUS INSTRUCTIONS GIVEN TO HIM OR HER BY HIS/HER SUPERVISOR.

SECTION 4. EACH OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF MINNESOTA, IT'S OFFICERS, OR AGENTS, FOR ANY ACTS OR OMISSIONS OF SAID CONCESSIONAIRE THAT MAY RESULT IN HIS LIABILITY TO THIRD PARTIES, AND THE STATE SHALL NOT BE LIABLE FOR ANY NEGLIGENCE ON THE CONCESSIONAIRE BASED ON ANY THEORY OF LIABILITY.

SECTION 5. EACH OPERATOR WILL PURCHASE A PUBLIC LIABILITY AND A PRODUCTS LIABILITY INSURANCE POLICY FOR HIS ENTERPRISE, AND SHOW PROOF TO THE PROGRAM.

SECTION 6. ONLY IN HARDSHIP OR UNUSUAL CASES WILL LIABILITY INSURANCE BE PURCHASED BY THE PROGRAM.

ARTICLE X
OPERATOR DEATH

SECTION 1. WHEN AN OPERATOR DIES, THE PROGRAM STAFF WILL TAKE AN INVENTORY AT THE ENTERPRISE IN COOPERATION WITH A MEMBER OF THE

FAMILY OR A REPRESENTATIVE OF THE ESTATE. THE PROGRAM STAFF WILL THEN FINALIZE A SUMMARY ACCOUNTING OF THE ACCOUNTS OF THE OPERATOR WITH THE PROGRAM. IF THE BALANCE IS IN FAVOR OF THE PROGRAM, THE ESTATE MUST PAY THIS BALANCE. IF THE BALANCE IS IN FAVOR OF THE DECEASED OPERATOR, THE PROGRAM MUST PAY THIS BALANCE.

SECTION 2. WHEN THE PROGRAM MAKES PAYMENT, THE CHECK WILL BE MADE PAYABLE TO THE "ESTATE OF _____(OPERATOR NAME)." THE SURVIVING HUSBAND OR WIFE, OR THE ADMINISTRATOR OF THE ESTATE, SHOULD HAVE NO PROBLEM CASHING THE CHECK, PARTICULARLY IF THEY ENDORSE THE CHECK AS ADMINISTRATOR AND MAKE DEPOSIT INTO A JOINT ACCOUNT WITH THE DECEASED. IN MAKING DEPOSITS INTO A JOINT ACCOUNT, AND WITH SUCH ENDORSEMENT, BANKING LAWS DO NOT REQUIRE ANY ACTIONS OR AUTHORITY OF PROBATE COURT. FOR FURTHER CLARIFICATION, YOU CAN REVIEW THIS WITH YOUR PERSONAL BANKER.

ARTICLE X - EFFECTIVE DECEMBER 20, 1977

ARTICLE XI
POLICY STATEMENT ON STRIKES

SECTION 1. LABOR DISPUTES PRESENT DIFFICULT SITUATIONS AND CHOICES FOR BOTH PARTIES INVOLVED AS WELL AS THE VENDORS WHO SERVE THE AFFECTED BUILDING OR FACILITY. FOR THIS REASON, THE BUSINESS ENTERPRISES PROGRAM HAS DEVELOPED A POLICY GOVERNING CONDUCT OF INDIVIDUAL BLIND MANAGERS IN THE EVENT OF A STRIKE. THEIR POSITION AS MANAGERS IS THE KEY TO THIS PROGRAM POLICY.

THESE MANAGERS ARE NOT EMPLOYEES OF THIS PROGRAM OR OF ANYONE ELSE, BUT ARE LICENSED TO MANAGE THEIR BUSINESSES BY THE STATE OF MINNESOTA THROUGH THIS PROGRAM AND MUST ABIDE BY LAW, RULES, PROGRAM POLICIES, AND MUST FULFILL THE CONTRACTS OR AGREEMENTS THIS PROGRAM HAS DEVELOPED IN THEIR BEHALF. BASED ON THIS PREMISE, THE FOLLOWING POLICY IS FOLLOWED BY MANAGERS WITHIN THE BUSINESS ENTERPRISES PROGRAM FOR THE BLIND:

POLICY ALL MANAGERS WILL MAKE EVERY REASONABLE EFFORT TO PROVIDE SERVICE TO THEIR RESPECTIVE LOCATIONS IN THE EVENT OF A STRIKE AT THAT LOCATION. IN RARE SITUATIONS SPECIAL CIRCUMSTANCES MAY EXIST. WITH SUCH OCCURRENCE AND AFTER THOROUGH DISUCSSION OF THE SITUATION BETWEEN THE MANAGER AND THE BEP DISTRICT SUPERVISOR, THE DISTRICT SUPERVISOR IS RESPONSIBLE FOR MAKING A DECISION AS TO THE COURSE OF ACTION.

SUCH A POLICY IS CONSISTENT WITH BEHAVIOR EXPECTED OF SUPERVISORS AND MANAGERS IN ALL OTHER FORMS OF BUSINESS.

ARTICLE XI EFFECTIVE NOVEMBER 27, 1981

ARTICLE XII
ACCOUNTING POLICIES

SECTION 1. THE ACCOUNTING POLICIES OF THE PROGRAM WILL NOT NECESSARILY MATCH WITH STATE AND FELERAL TAX DEPARTMENT LAW AND RULES. THERE ARE EXCEPTIONS; A FEW OF THE MORE SIGNIFICANT ONES ARE LISTED HERE:

1. THE NET PROFIT AS SHOWN ON THE P & L STATEMENT IS THE NET PROFIT AFTER DEDUCTING THE OPERATIONAL CHARGE. IT DOES NOT MEAN, HOWEVER, THAT THE O.C. HAS BEEN PAID. FOR TAX PURPOSES, THE NET PROCEEDS, LESS THE ACTUAL O.C. PAID THAT YEAR, IS THE OPERATOR INCOME FOR THAT YEAR.

2. FOR ANY ENTERPRISE, ESPECIALLY A VENDING MACHINE ROUTE WHERE THE DISTRICT SUPERVISOR HAS CERTIFIED THAT A VEHICLE IS ESSENTIAL TO THE CONDUCTING OF BUSINESS (AS AGAINST A CONVENIENCE), ACTUAL COSTS OF

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TRANSPORTATION FOR THE BUSINESS MAY BE DEDUCTABLE AS A PROGRAM BUSINESS EXPENSE. SUCH EXPENSES MAY INCLUDE THE COST OF THE VEHICLE -- APPROVED LIST PRESENTLY INCLUDES ONLY STAND #51, #56, #65, #81 AND #101 AND #142 (EFFECTIVE 4/12/85). THE APPROVED LIST MAY BE AMENDED JOINTLY BY PROGRAM STAFF AND THE OPERATOR MANAGEMENT COMMITTEE. DISTRICT SUPERVISORS MUST REVIEW ALL TRANSPORTATION EXPENSES AS WELL AS ALL VEHICLE EXPENSES ON A CASE BY CASE BASIS WITH PROFITABILITY BEING A MAJOR GUIDELINE FOR EACH ENTERPRISE.

3. THERE MAY BE OTHER BUSINESS EXPENSES NOT AUTHORIZED BY THE PROGRAM OR BY THE DISTRICT SUPERVISOR THAT MAY BE PERMITTED AS EXPENSES FOR TAX PURPOSES. IT IS, THEREFORE, THE RESPONSIBILITY OF EACH OPERATOR TO PROCESS HIS/HER OWN BUSINESS PROFIT AND LOSS EACH YEAR FOR TAX PURPOSES.

ARTICLE XII - EFFECTIVE DATE NOVEMBER 1, 1983

ARTICLE XIII
IMPROVEMENT IN VISION

SECTION 1. MINNESOTA RULES CHAPTER 9570 AND FEDERAL LAW (PUBLIC LAW 93-516) AND RULE (CFR TITLE 34, PART 395) REQUIRE LICENSED BLIND VENDORS TO BE LEGALLY BLIND AS A CONDITION OF CONTINUED PARTICIPATION IN THE RANDOLPH-SHEPPARD VENDING PROGRAM. MINNESOTA RULES 9570.0200, ISSUANCE AND CONDITIONS OF LICENSES, SETS FORTH THE VISUAL STANDARDS FOR LEGAL BLINDNESS.

SECTION 2. IN ORDER TO EQUITABLY DETERMINE ON AN ON-GOING BASIS ALL LICENSED VENDORS' VISUAL STATUS, THE FOLLOWING PROCEDURES WILL BE FOLLOWED:

1. BY JUNE 30, 1987, ALL LICENSED VENDORS MUST PROVIDE THE PROGRAM CURRENT (LESS THAN SIX MONTHS OLD) OPHTHALMOLOGICAL OR OPTOMETRIC EVIDENCE REGARDING THEIR VISUAL STATUS. EVIDENCE WILL BE SUFFICIENT IF THE INFORMATION ALLOWS THE STATE OPHTHALOLOGICAL CONSULTANT TO DETERMINE WHETHER THE LICENSED VENDOR IS

2. THOSE OPERATORS WHO BELIEVE THAT THEIR RECORDS WITH STATE SERVICES FOR THE BLIND WILL VERIFY THAT THEY ARE TOTALLY AND PERMANENTLY BLIND SHALL INFORM THE PROGRAM OF THAT FACT FOR VERIFICATION. IF VERIFIED, NO FURTHER ACTION IS REQUIRED. IF NOT VERIFIED, THE NOTED EXAMINATION MUST TAKE PLACE.

3. IF THE UPDATED OPHTHALMOLOGICAL OR OPTOMETRIC EVIDENCE SPECIFICALLY STATES THAT THE LICENSED VENDOR IS PERMANENTLY AND TOTALLY BLIND, AND THE OPHTHALMOLOGICAL CONSULTANT AGREES, THE LICENSED VENDOR WILL NOT BE SUBJECT TO FUTURE EXAMINATIONS UNDER THIS ARTICLE.

4. THEREAFTER, ALL LICENSED VENDORS WILL PROVIDE EVIDENCE AS IN SECTION 2, ITEM 1, BY JUNE 30TH OF YEARS ENDING IN 0 AND 5.

5. LICENSED VENDORS NOT COMPLYING WILL BE ASSUMED TO BE NOT LEGALLY BLIND AND WILL RECEIVE NOTICE OF REMOVAL FROM THE PROGRAM PURSUANT TO MINNESOTA RULES 9570.0300, LICENSE PERIOD AND LICENSE TERMINATION AND 9570.1200, REVIEW OF AGENCY ACTION.

SECTION 3. IF A LICENSED VENDOR IS FOUND TO BE NOT LEGALLY BLIND ON THE BASIS OF AN OPHTHALMOLOGICAL OR OPTOMETRIC REPORT, THE PROGRAM SHALL REMOVE THEM IN ACCORDANCE WITH MINNESOTA RULES 9570.0200, LICENSE PERIOD AND LICENSE TERMINATION, AND 9570.1200, REVIEW OF AGENCY ACTION. THEIR TERMINATION DATE WILL BE 1 YEAR FROM THE DATE OF THEIR TERMINATION NOTICE. THE LICENSED VENDOR WILL BE IMMEDIATELY REFERRED TO THE VOCATIONAL REHABILITATION UNIT OF SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED TO BE EVALUATED FOR ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES THAT WOULD LEAD TO AN ALTERNATIVE VOCATIONAL PLACEMENT.

SECTION 4. A LICENSED VENDOR MAY EXPENSE THE COSTS OF OBTAINING OPHTHALMOLOGICAL OR OPTOMETRIC EVIDENCE THAT OCCURS AS A RESULT OF THIS POLICY AS A BUSINESS EXPENSE ON THEIR BOOKS SUBMITTED TO THE AGENCY.

EFFECTIVE DATE APRIL 11, 1986

ARTICLE XIII
IMPROVEMENT IN VISION

Section 1. Minnesota Rules Chapter 9570 and Federal Law (Public Law 93-516) and Rule (CFR Title 34, Part 395) require licensed blind vendors to be legally blind as a condition of continued participation in the Randolph-Sheppard Vending Program. Minnesota Rules 9570.0200, Issuance and Conditions of Licenses, sets forth the visual standards for legal blindness.

Section 2. In order to equitably determine on an on-going basis all licensed vendors' visual status, the following procedures will be followed:

1. By June 30, 1987, all licensed vendors must provide the Program current (less than six months old) ophthalmological or optometric evidence regarding their visual status. Evidence will be sufficient if the information allows the state ophthalmological consultant to determine whether the licensed vendor is legally blind or not.

2. Those operators who believe that their records with State Services for the Blind will verify that they are totally and permanently blind shall inform the Program of that fact for verification. If verified, no further action is required. If not verified, the noted examination must take place.

3. If the updated ophthalmological or optometric evidence specifically states that the licensed vendor is legally blind, and the ophthalmological consultant indicates blindness is permanent, the licensed vendor will not be subject to future examinations under this article.

4. Thereafter, all licensed vendors will provide evidence as in Section 2, Item 1, by June 30th of years ending in 0 and 5.

5. Licensed vendors not complying will be assumed to be not legally blind and will receive notice of removal from the Program pursuant to Minnesota Rules 9570.0300, License Period and License Termination and 9570.1200, Review of Agency Action.

Section 3. If a licensed vendor is found to be not legally blind on the basis of an ophthalmological or optometric report, the Program shall remove them in accordance with Minnesota Rules 9570.0200, License Period and License Termination, and 9570.1200, Review of Agency Action. Their termination date will be 1 year from the date of their termination notice. The licensed vendor will be immediately referred to the vocational rehabilitation unit of Services for the Blind and Visually Handicapped to be evaluated for eligibility for vocational rehabilitation services that would lead to an alternative vocational placement.

Section 4. A licensed vendor may expense the costs of obtaining ophthalmological or optometric evidence that occurs as a result of this policy as a business expense on their books submitted to the Agency.

Effective Date April 11, 1986
Amended 7/24/87

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ARTICLE XIV

EDUCATION, TRAINING AND OTHER MEETING EXPENSES

Section 1. Licensed vendors may deduct as business expenses on their cash paid out ledgers those expenses related to education, training and meetings. Those expenses may include:

A. Conference registration.

B. Transportation.

C. Lodging.

D. Food, if meeting is not in home town.

Section 2. Expenses deducted for these purposes are subject to the following conditions:

A. Deductible expenses must be for activities occuring within the State of Minnesota or as modified by the Director of Business Enterprises.

B. Expenses will be allowed only for the licensed vendor.

C. Receipt or invoice must be included with monthly report on which the expense is deducted.

D. The Operator Management Committee will be consulted for interpretation of this policy should any disputes arise.

E. Deductible expenses may occur for no more than two activities per calendar year.

Effective 7/24/87

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
RSA-PI-77-27

Date: August 15, 1977

TO: STATE REHABILITATION AGENCIES (General)
STATE REHABILITATION AGENCIES (Blind)

SUBJECT: Procedures for Administrative Review and a Full Evidentiary Hearing under the Randolph-Sheppard Act

PURPOSE: This memorandum transmits the following:

New Material - Guidance to State licensing agencies for developing Administrative Review and Full Evidentiary Hearing Procedures. The development of evidentiary hearing procedures is required under Sections 1369.4(a) and 1369.13 (a) of the final Regulations implementing the Randolph-Sheppard Act.

CONTENT: - These instructions are designed to provide State licensing agencies for the Randolph-Sheppard Vending Facility Program for the Blind guidance in the development of two pre-arbitration mechanisms for the resolution of disputes between blind vendors and State licensing agencies occasioned by vendor dissatisfaction with any agency action arising from the operation or administration of the program.

If such disputes are not resolved to the satisfaction of a blind vendor after provision of a full evidentiary hearing, an appeal may be made to the Secretary for the convening of an arbitration panel.

We suggest that each State agency adopt the attached administrative review procedures as an informal mechanism for resolving issues of dispute. Each State agency must adopt evidentiary hearing procedures which comport with the requirements set forth in this Program Instruction.

Effective Date: Date of Issuance

Inquiries to: Assistant Commissioner, Office for the Blind and Visually Handicapped

Joseph L. Mathews
Acting Commissioner
of Rehabilitation Services

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PROCEDURES FOR ADMINISTRATIVE REVIEW
AND A FULL EVIDENTIARY HEARING
UNDER THE RANDOLPH-SHEPPARD ACT

ADMINISTRATIVE REVIEW PROCEDURE

The purpose of an administrative review is to provide an informal procedure through which the State licensing agency provides a blind vendor or his representative an opportunity to express and seek remedy for his dissatisfactions with any agency action arising from the operation or administration of the vending facility program. State licensing agencies should make every effort to resolve vendor complaints at the administrative review level since the resolution of disputes at the earliest possible time is mutually advantageous to all parties concerned. Such efforts should not, however, discourage or interfere with vendors exercising their rights to pursue the formal full evidentiary hearing process.

We suggest that each State licensing agency adopt the following administrative review procedures which would afford blind vendors an informal mechanism for resolving issues of dispute:

a. A blind vendor or his designee (who may be a member of the State Committee of Blind Vendors in accordance with section 1369.14 (b)(2) of the Randolph-Sheppard Regulations) may request in writing, within 15 working days of the occurrence of the action, administrative review of a State agency action arising out of the operation or administration of the vending facility program with which the blind vendor is aggrieved. This review will be made only by a member or members of the administrative staff of the agency who has not in any way participated in the agency action in question.

b. The administrative review shall be held at a time and place convenient to the blind vendor requesting such review. The administrative review should be held during regular agency working hours, at a district or local office location. It is expected that an administrative review will be conducted within 15 working days of receipt by the State agency of such a written request.

c. Transportation, reader or other communication services, if needed, should be arranged for the blind vendor by the State licensing agency.

d. 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.

e. When an informal administrative review does not resolve a dispute to the satisfaction of a blind vendor, such blind vendor may request of a State agency a full evidentiary hearing in accordance with section 5(a) of the Randolph-Sheppard Act and sections 1369.6(e) and 1369.13(a) of the Regulations.

PROCEDURES FOR A FULL EVIDENTIARY HEARING

When a blind vendor is dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program such blind vendor may file a complaint with the State agency requesting a full evidentiary hearing. Such complaint should identify one or more disputed issues of fact to be resolved in an evidentiary hearing. Complaints alleging only issues of law, for example the authority of a State agency to take a particular action, are not appropriate for resolution through an evidentiary hearing. An evidentiary hearing should not be conducted to settle issues of law, the resolution of which depends on an interpretation of Federal statutory or regulatory requirements or State agency policy. The resolution of these issues is the responsibility of the appropriate Federal or State agency subject to judicial review. Adherence of a State agency to its own policy as set forth in its application for designation as the State licensing agency and consistency of application of State agency policy are examples of issues of fact which, if disputed, can be resolved through the introduction of documents and the examination and cross-examination of witnesses at an evidentiary hearing.

A full evidentiary hearing conducted by a State licensing agency must contain the following procedural elements to assure due process to a blind vendor:

1. Notice.

   Notice of the time and date of the hearing and the issues in dispute must be given sufficiently in advance of the hearing so that reasonable opportunity to prepare shall be afforded.

2. Right to be represented by counsel.

3. Impartial presiding official.

4. Right to present witnesses and to cross-examine adverse witnesses.

5. Decision on the record.

6. Transcript of the proceedings.

7. Notice, conduct of the hearing, and decision within prescribed and reasonable time limits.

A State licensing agency may adopt its own evidentiary hearing procedures provided those procedures contain all of the aforementioned elements. Such procedures shall be incorporated into its State rules and regulations (required by section 1369.4 of the Randolph-Sheppard Regulations) and shall be submitted by the State agency as part of its application for designation as a State licensing agency in accordance with section 1369.3(a)(7) of the Randolph-Sheppard Regulations.

The following procedures, if adopted by a State licensing agency, would satisfy the Federal requirements for providing a full evidentiary hearing and are accordingly suggested for adoption:

a. Blind vendors shall be informed in writing of their right to and the procedures to be followed in obtaining a full evidentiary hearing at the time they are licensed.

b. If a blind vendor requests a full evidentiary hearing, such 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 blind vendor is dissatisfied.

c. A blind vendor must request a full evidentiary hearing in writing. This request must be transmitted to the administrator of the State licensing agency personally or by certified mail, return receipt requested. This request may be transmitted through the State Committee of Blind Vendors in accordance with section 1369.14 (b)(2) of the Randolph-Sheppard Regulations.

d. A blind vendor is entitled to legal counsel or other representation in a full evidentiary hearing. A blind vendor may wish to obtain his own counsel at his own expense or may wish to avail himself of any legal services available in the community at little or no cost, such as Legal Aid Society, Neighborhood Legal Services, or any other sources able and willing to provide representation for the blind vendor. In the event that a blind vendor is unable to obtain legal counsel at his own expense, the State licensing agency may elect, in accordance with its policies and procedures, to pay part or all of the costs of such legal services. A reasonable fee for such counsel is eligible for Federal financial participation as a State agency expense in connection with the administration of the Randolph-Sheppard Vending Facility Program, if allowable under the State licensing agency's policies and procedures.

e. Reader services or other communication services shall be arranged for the blind vendor should he so request. Transportation costs and per diem shall be provided also to the blind vendor during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the blind vendor. The availability of these services should be reflected in the State licensing agency's policies and procedures. These costs are also eligible for Federal financial participation as a State agency expense in connection with the administration of the program.

f. The hearing shall be held at a time and place convenient and accessible to the blind vendor requesting a full evidentiary 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. The hearing shall be scheduled by the State licensing agency within 15 working days of its receipt of such a request, unless the State licensing agency and the blind vendor mutually, in writing, agree to some other period of time. The blind vendor shall be notified in writing of the time and place fixed for the hearing and of his right to be represented by legal or other counsel. The blind vendor shall be provided a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.

g. The presiding officer at the hearing shall be an impartial and qualified official who has no involvement either with the State agency action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard Vending Facility Program. He or she may be a staff member or official of another State agency or a State agency hearing officer.

h. The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

i. Both the blind vendor and the State licensing agency are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issues.

j. All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties and opportunities shall be given to refute facts and arguments advanced on either side of the issues.

k. A transcript shall be made of the oral evidence and shall be made available to the parties. The State licensing agency shall pay all transcript costs and shall provide the blind vendor with at least one copy of the transcript. Transcript costs and other State licensing agency costs associated with the conduct of this hearing are eligible for Federal financial participation as an expense in connection with the administration of the Randolph-Sheppard Vending Facility Program.

l. The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

m. The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, regulation, and agency policy. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor.

The decision shall also set forth any remedial action necessary to resolve the issues in dispute.

The decision shall be made within 15 working days after the receipt of the official transcript. The decision shall be mailed promptly to the blind vendor and the State licensing agency.

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n. If a blind vendor is dissatisfied with the decision rendered after a full evidentiary hearing, he may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Health, Education, and Welfare, as authorized by section 5(a) of the Randolph-Sheppard Act and 45 CFR § 1369.13 (a), within 15 working days of his receipt of such decision.

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13.76 DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT DATA.

Subdivision 1. **Development loan data.** All financial information on individuals and business entities including, but not limited to, credit reports, financial statements, and net worth calculations, that are contained in an application received by the department of trade and economic development in its administration of the certified state development loan program are classified as private data with regard to data on individuals, and as nonpublic data with regard to data not on individuals until the application is approved.

[For text of subd 2, see M.S.1988]

History: *1989 c 351 s 10*

13.791 REHABILITATION DATA.

Subdivision 1. **General.** Unless the data is summary data or is otherwise classified by statute or federal law, all data collected and maintained by the department of jobs and training that pertain to individuals applying for or receiving rehabilitation services is private data on individuals.

[For text of subd 2, see M.S.1988]

Subd. 3. **Data on blind vendors.** The commissioner of jobs and training may release the name, business address, and business telephone number of an individual licensed under section 248.07, subdivision 8. The state committee of blind vendors organized in accordance with Code of Federal Regulations, title 34, section 395.14, has access to private data in the department of jobs and training on an individual licensed under section 248.07, subdivision 8, to the extent necessary to complete its duties.

History: *1989 c 86 s 1,2*

13.793 NATURAL RESOURCES MINERAL DATA.

Subdivision 1. **Nonpublic data.** Except as provided in subdivision 2, the following data received and maintained by the commissioner of natural resources are nonpublic data:

(1) a letter or other documentation from a person that is supplied to the commissioner before a public lease sale of metallic or other minerals for the purpose of making suggestions or recommendations about which state lands may be offered for public lease sale; or

(2) a written report or other documentation of private analyses of a state-owned or controlled drill core that is public data and is under the custody of the commissioner.

Subd. 2. **Data become public.** Data under subdivision 1, clause (1), become public data three years after the date the lease sale was held or, if not held, within three years after the date the lease sale was scheduled to be held. Data under subdivision 1, clause (2), become public data 90 days after receipt by the commissioner.

History: *1989 c 182 s 1*

13.794 INTERNAL AUDITING DATA.

Subdivision 1. **Confidential data or protected nonpublic data.** Data, notes, and preliminary drafts of reports created, collected, and maintained by the internal audit offices of state agencies or persons performing audits for state agencies and relating to an audit or investigation are confidential data on individuals or protected nonpublic data until the final report has been published or the audit or investigation is no longer being pursued actively.

Subd. 2. **Private data on individuals.** Data on an individual supplying information for an audit or investigation, that could reasonably be used to determine the individual's identity, are private data on individuals if the information supplied was needed for an audit or investigation and would not have been provided to the internal audit office

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration

Certificate of Assumed Name for Capitol Child Care

Filed with the Office of the Secretary of State, State of Minnesota, February 28, 1990—7:55 a.m.—090747

Pursuant to Chapter 333, *Minnesota Statutes;* the undersigned, who is or will be conducting or transacting a commercial business in the State of Minnesota under an assumed name, hereby certifies:

1. The assumed name under which the business is or will be conducted is: **Capitol Child Care**
2. The street address of the principal place of business is or will be: **671 North Robert Street, St. Paul, MN 55101**
3. The name and street address of **all** persons conducting business under the above Assumed Name.

NAME	STREET ADDRESS
Minnesota Department of Administration	**50 Sherburne Ave., St. Paul, MN 55155**
Neil Johnson	**2616 Keller Parkway, Maplewood, MN 55109**
Claudia McPeek	**1629 Innsbruck Circle West, Columbia Heights, MN 55421**

I certify that I am authorized to sign this certificate and I further certify that I understand that by signing this certificate, I am subject to the penalties of perjury as set forth in section 609.48 as if I had signed this certificate under oath.

Dated: 21 February 1990

James L. Pederson
Assistant Commissioner

#413777

Ethical Practices Board

Notice of 1990 Election Year Campaign Expenditure Limits

In accordance with *Minnesota Statutes* §§ 10A.25, and 10A.255, the following are election year campaign expenditure limits for 1990 by office sought: Governor and Lt. Governor, $1,626,691; Attorney General, $271,116; Secretary of State, State Auditor, State Treasurer (each), $135,559; State Senator, $40,669; State Representative, $20,335.

Department of Jobs and Training

Services for the Blind

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind Including the Impact of the Rules on Small Businesses

NOTICE IS HEREBY GIVEN that the Department of Jobs and Training is seeking information or opinions from sources outside the agency in proposing to adopt amendments to *Minnesota Rules,* parts 3321.0100 through 3321.1400, relating to Vending Stands and Business Enterprises of Services for the Blind. These permanent rules are being proposed to interpret *Minnesota Statutes*, section 248.07, subdivisions 7 and 8. Outside opinion is also being solicited concerning how these rules will affect small businesses as defined by *Minnesota Statutes,* section 14.115, subdivision 1.

The proposed amendments to rules will establish due dates for payments from blind operators and impose penalties for significantly late payments and reports from operators. Furthermore, the proposed amendments will change certain requirements for the purchase of merchandise by operators. Other technical and housekeeping changes will also be proposed.

Interested persons or groups may submit data or comments in writing. Written comments should be addressed to:

Charles Hamilton
State Services for the Blind
1745 University Avenue West
St. Paul, MN 55104

All comments and information will be accepted until 4:30 p.m. on April 20, 1990. Any written material received by the Department of Jobs and Training will become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event the rules are adopted.

Joe Samargia, Commissioner
Department of Jobs and Training

Department of Natural Resources

Outside Opinions Sought Regarding Proposed Rules for Use of All-Terrain Vehicles

NOTICE IS HEREBY GIVEN that the Minnesota Department of Natural Resources is seeking opinions from sources outside the agency in preparing to promulgate rules governing:

1. **registration of all-terrain vehicles** and display of registration numbers;

2. **use of all-terrain vehicles** insofar as game and fish are affected;

3. **use of all-terrain vehicles on public lands and waters** under the jurisdiction of the commissioner of natural resources;

4. **uniform signs** to be used by the state, counties, and cities necessary or desirable to control, direct, or regulate the operation and use of all-terrain vehicles; and

5. **specifications** relating to all-terrain vehicle mufflers.

The promulgation of these rules is authorized by *Minnesota Statutes* Sec. 84.924, which directs the agency to adopt such rules.

The Department of Natural Resources requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views in writing or orally. Written statements should be addressed to:

Mr. Thomas R. Danger, Supervisor
Trails Operations Section
Trails and Waterways Unit
Minnesota Department of Natural Resources
DNR Building—500 Lafayette Road
Saint Paul, Minnesota 55155-4052

Oral statements will be received during regular business hours over the telephone at (612) 296-4822 and in person at the above address.

All statements of information and opinions shall be accepted until April 20, 1990. Any written material received by the Department of Natural Resources shall become part of the record to be submitted to the Attorney General or Administrative Law Judge in the event that the rules are promulgated.

Dated: 20 February 1990

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources

Minerals Division

Notice of Sale of State Metallic Minerals Leases

NOTICE IS HEREBY GIVEN that a sale of leases to prospect for, mine and remove metallic minerals in trust fund lands, lands and minerals forfeited for non-payment of taxes, lands and minerals otherwise acquired, and other state-owned land under the jurisdiction of the Commissioner of Natural Resources, and located in portions of Aitkin, Beltrami, Itasca, Koochiching, Lake of the Woods, Marshall, Roseau and St. Louis counties, is scheduled to be held on April 18, 1990 at 11:15 a.m. The sale will take place in Room 118, State Capitol Building, St. Paul, Minnesota. No land or water areas within the Boundary Waters Canoe Area Wilderness or Voyageurs National Park are included in this lease sale.

STATE OF MINNESOTA
DEPARTMENT OF JOBS AND TRAINING

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Relating to Vending Stands and Business Enterprises of Services for the Blind

AFFIDAVIT OF MAILING

Roger Sorbel, Rules Coordinator, being duly sworn deposes and says:

That on the 29th day of May, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without a Public Hearing and a copy of proposed rules by depositing in the State of Minnesota Central Mail System for the United States mail system at said City of St. Paul, copies thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department for the purpose of receiving notice of rulemaking by the Department.

STATE OF MINNESOTA

Roger Sorbel

Roger Sorbel
Rules Coordinator
Policy Development Office
Department of Jobs and Training

Subscribed and sworn to before me
this 29th day of May, 1990.

Annette M Selbitschka

Notary Public
Ramsey County

ANNETTE M. SELBITSCHKA
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPTEMBER 18, 1993

STATE OF MINNESOTA
DEPARTMENT OF JOBS AND TRAINING

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Relating to Vending Stands and Business Enterprises of Services for the Blind

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Roger Sorbel, Rules Coordinator, being duly sworn deposes and says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Services for the Blind rulemaking mailing list is accurate, complete, and current as of this 19th day of July, 1990.

Roger Sorbel
Roger Sorbel
Rules Coordinator
Policy Development Office
Department of Jobs and Training

Subscribed and sworn to before me
this 19TH day of JULY, 1990

Dan W. Simpson
Notary Public
Ramsey County

DAN W. SIMPSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSON EXPIRES MARCH 27, 1991

Subp. 5. **Policies and procedures to detect deterioration of building and equipment.** The facility administrator shall develop policies and procedures designed to detect building and equipment deterioration, safety hazards, and unsanitary conditions. Policies and procedures must include:

A. a requirement that facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs (mandatory);

B. a process for prioritizing work requests and reporting to the governing body in an expedient manner; and

C. a records system for review of budget and work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders, and completion of requests.

Subp. 6. **Elimination of conditions conducive to vermin (mandatory).** A condition in the facility conducive to harborage or breeding of insects, rodents, or other vermin must be eliminated immediately.

Subp. 7. **Fire inspection (mandatory).** Fire inspections of the facility must be conducted on an annual basis by a state fire marshal or local fire official. Documentation of the inspection and any resulting orders must be maintained and available for inspection by the regulatory authority. Failure to comply with fire safety requirements will result in a denial of approval to continue facility operations.

Department of Jobs and Training

Proposed Permanent Rules Relating to Vending Stands and Business Enterprises of Services for the Blind

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Jobs and Training proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The proposed rules will amend *Minnesota Rules*, parts 3321.0100 through 3321.1400, relating to Vending Stands and Business Enterprises of State Services for the Blind.

The proposed rules interpret *Minnesota Statutes*, section 248.07, subdivisions 7 and 8. These rules have been developed as authorized by *Minnesota Statutes*, section 248.07, subdivision 14a.

Persons interested in these rules will have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes* sections 14.131 to 14.20.

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

Chuck Hamilton
State Services for the Blind
1745 University Avenue
St. Paul, Minnesota 55104

Comments or requests for a public hearing must be received by the department by 4:30 p.m. on July 12, 1990. Any written material received by the agency will become part of the rulemaking record to be submitted to the Attorney General in the event the rules are adopted.

The proposed rules may be modified if the modifications are supported by data and comment and do not result in a substantial change in the proposed rules as noticed.

A copy of these rules in braille, audio tape and ink print is available for review from Chuck Hamilton at the above address.

The proposed amendments to rules will establish due dates for payments from blind operators and impose penalties for significantly late payments and reports from operators. Furthermore, the proposed amendments will change certain requirements for the purchase of merchandise by operators. Other technical and housekeeping changes will also be proposed.

Notice is hereby given that a Statement of Need and Reasonableness is now available. The Statement of Need and Reasonableness describes the need and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency, or copies may be obtained from Chuck Hamilton upon request at the above address.

These proposed rules may affect small businesses as defined in *Minnesota Statutes*, section 14.115, subdivision 1. Pursuant to *Minnesota Statutes*, section 14.115, subdivision 2, five methods were considered by the agency to reduce the impact of the proposed rules on small businesses. A discussion of these methods can be found in the Statement of Need and Reasonableness.

A fiscal note will not be prepared. The authority for these proposed rules, *Minnesota Statutes*, Chapter 248, was enacted before July 1, 1985. Therefore, these proposed rules need not include a fiscal note under exceptions provided by *Minnesota Statutes*, section 3.983, subdivision 3.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General from Chuck Hamilton at the above address.

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 adopted rules, must submit the written request to Chuck Hamilton.

Joe Samargia, Commissioner
Department of Jobs and Training

Rules as Proposed

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to *Minnesota Statutes*, section 248.07, subdivision ~~11~~ 14a, ~~the following rules are hereby~~ this chapter is issued by the commissioner of jobs and training to govern all vending stands and business enterprises established by the Services for the Blind, Department of Jobs and Training, for which the department is responsible. Licenses to blind persons will be issued ~~in accordance with these rules~~ according to this chapter and applicable statutes by the commissioner or ~~his~~ a designee, hereinafter to be known as the licensing agency. A licensed blind person is an independent contractor to the licensing agency and is not an employee of the licensing agency or the state of Minnesota.

3321.0300 PERIOD OF LICENSE.

Each license will be issued upon execution of an operator's first agreement pursuant to part 3321.0500, subpart 1, for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

A. failure to operate ~~in accordance with~~ according to parts 3321.0100 to 3321.1400, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property;

B. improvement of vision so that the operator no longer meets the definition of blindness ~~as stated in item A~~ under part 3321.0200;

C. 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; ~~and~~

D. withdrawal of the operator from the program upon the operator's written notification to the licensing agency~~.~~; and

E. failure to work as a licensed operator, relief operator, or take additional approved training related to the operation of an enterprise, a minimum of two weeks per year unless on an approved leave.

A license may be issued to a blind person to operate an enterprise in the program without that person taking vending machine training. No licensee may be placed or transferred to a vending machine enterprise without first taking and satisfactorily completing vending machine training sufficient to operate the vending stand or business enterprise in question.

3321.0350 DETERMINATION OF VISUAL STATUS.

Subpart 1. **Testing; evidence of visual acuity.** In order to equitably determine ongoing compliance with visual requirements for operators under parts 3321.0200 and 3321.0300, item B, in years ending in zero and five all licensed vendors must provide current ophthalmological or optometric evidence documenting their visual status. "Current" means evidence of an examination no more than six months old from the date of submission. Evidence is sufficient if it allows the state ophthalmological consultant to determine

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.

whether or not the operator is legally blind. If the ophthalmological consultant determines the operator to be legally blind and specifically states that the blindness is permanent, the operator will not be subject to future examinations under this part.

Subp. 2. **License termination; failure to prove visual acuity.** Operators not providing ophthalmological or optometric evidence are presumed to be not legally blind and action must be taken under part 3321.0300 to terminate their license.

Operators found to be not legally blind on the basis of the submitted evidence shall have their licenses terminated under part 3321.0300. Their termination date is one year from the date of their notice of license termination. The operator must immediately be referred to the vocational rehabilitation unit of Services for the Blind and Visually Handicapped to be evaluated for eligibility for services that would lead to alternative vocational opportunities.

Subp. 3. **Cost of examination.** An operator may enter as an expense on their books submitted to the licensing agency the cost of obtaining ophthalmological or optometric evidence required by this chapter.

3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.

The licensing agency is responsible:

A. for furnishing each vending stand or business enterprise with adequate, suitable equipment ~~and maintenance, repair~~, and replacement of such equipment and assistance in maintenance and repair of equipment; and

B. 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 unless mutually agreed otherwise by the licensing agency and the operator.

3321.0700 RIGHT TO, TITLE TO, AND INTEREST IN THE VENDING STAND EQUIPMENT AND STOCKS.

Subpart 1. **Inventories.** 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 or when operators withdraw from a specific vending stand or business enterprise location, the licensing agency will purchase for the new operator, at ~~the prevailing wholesale price~~ cost, ~~all~~ salable merchandise and, at an amortized price, ~~all~~ supplies remaining in the stand, assuming there is no ~~delinquency~~ amount owing in the departing 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. When a licensed operator under contract dies, the licensing agency must immediately take an inventory at the stand in cooperation with a member of the operator's family or a representative of the operator's estate. The licensing agency must then prepare a summary accounting of the deceased licensed operator's accounts with the licensing agency. If the balance is in favor of the licensing agency, the estate must pay that balance. If the balance is in favor of the deceased licensed operator, the licensing agency must pay the balance to the estate. The warrant will be made payable to the "Estate of [licensed operator's name]."

Subp. 2. **Operator determination of acquisition.** Beginning 12 months following the effective date of this subpart, an operator who begins to operate at a vending stand or business enterprise location shall determine what merchandise or supplies the new operator shall purchase from the departing operator. In the case of an operator disagreement over the purchase of supplies or merchandise, the departing operator may request that the licensing agency intervene and make a final decision. The departing operator shall be responsible for disposing of the merchandise or supply inventory not purchased by the new operator.

3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Due date.** Funds set aside from vending stand proceeds are due by the 25th of the following month.

3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND PARTICIPATION OF OPERATORS.

[For text of subpart 1, see M.R.]

Subp. 2. **Operator duties.** 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~~ according to 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;

[For text of item B, see M.R.]

C. operate the vending stand ~~in accordance with~~ according to all applicable health laws and regulations and any other applicable federal, state, or local law or regulation;

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

~~E. make no credit sales; and~~

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

E. indemnify and hold harmless the state of Minnesota, its officers, or agents, for any acts or omissions of said operator that may result in the operator's liability to third parties, and the state shall not be liable for negligence based on any theory of liability; and

F. provide the licensing agency at least 60 days notice of intent to leave the program.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure 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~~ according to the following policies in addition to other provisions of parts 3321.0100 to 3321.1400.

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. No operator may transfer to another stand and bid back into the stand the operator just left in the same bidding sequence. An operator is in default if either of the following is more than 30 days late:

(1) reports under subpart 2, item D; or

(2) payment in full under part 3321.0800.

In case of any default, the operator will be assessed a late fee of $20. The licensing agency shall notify the operator of the default and penalty. An operator who is in default twice within six months will not be permitted to transfer to new or vacated stands, after notice of disqualification from the licensing agency. The operator may regain eligibility to transfer if the operator has cured any prior default and has not been in default for six consecutive months after the prior defaults have been cured. 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.~~ A leave of absence for medical reasons, supported by a doctors statement, may be granted by the licensing agency and operator management committee and the operator shall continue to accrue seniority during the leave. A medical leave of absence for up to three months, which may be later extended for an additional three months, may be granted under a plan in which the requesting operator retains responsibility for and general management of the current vending stand. A medical leave up to one year may also be granted under a plan in which the operator permanently gives up all responsibility for and rights to the current vending stand. A doctor's statement of ability to return to work is required before an operator's actual return to a stand.

A general leave of absence may be granted by the licensing agency and operator management committee for a period up to two years during which time the operator shall not accrue seniority but may exercise seniority rights for new or vacated stands. The operator shall retain seniority accrued up to the date of the leave. An operator on general leave shall give up all rights to the vending stand or business enterprise which they are operating.

B. When it has been determined that a relief operator or an assistant or assistants must be employed, the ~~licensing agency~~ operator shall first make attempts to locate a handicapped individual before approving the employment of a nonhandicapped 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~~ acquire liability and if necessary workers' compensation insurance for the vending stand. The

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.

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.

E. The licensing agency shall review all operator books and other information with specific attention to expenses and take those steps necessary to ensure operator payment of those expenses.

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

[For text of subpart 1, see M.R.]

Subp. 2. **Representation, nominations, and terms.** The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

[For text of items A to C, see M.R.]

D. The committee shall elect its own ~~chairman~~ chair and other officers. The ~~chairman~~ chair shall appoint subcommittees as necessary.

E. The full committee will meet a minimum of ~~twice~~ four times a year. Meetings may be called by notice of either the licensing agency or the ~~chairman~~ chair of the committee. Subcommittees will meet as necessary to carry on their functions.

[For text of item F, see M.R.]

[For text of subp 3, see M.R.]

3321.1200 REVIEW OF AGENCY DECISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to *Minnesota Statutes*, chapter 14 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.

[For text of item A, see M.R.]

B. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the ~~administrator~~ director 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, whose designee shall serve as an impartial presiding officer, and then notify the operator of the time and place for the hearing. The operator must be provided sufficient preparation time before the hearing. The operator shall be provided a copy of the hearing procedures and rules.

D. The operator has the right to be represented by counsel, and may present witnesses and cross-examine adverse witnesses.

E. A transcript of the proceeding must be available to the operator.

F. After receipt of the report of the administrative law judge the ~~state administrator (or, in the case of license revocation, the commissioner of jobs and training)~~ director shall issue a ~~proposed~~ written decision within 15 days. ~~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 Minnesota Statutes, section 248.07, subdivision 15, clause (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.~~

Subp. 4. **Arbitration panel.** 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 Code of Federal Regulations, title ~~45~~ 34, section ~~1369.13 (1979)~~ 395.13 (1981).

3321.1300 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~~ the 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~~ the data. The operator management committee organized under part 3321.1100 shall be provided all individual and program data necessary to carry out its purpose and function.

Department of Jobs and Training

Proposed Permanent Rules Relating to Vending Stands and Business Enterprises of State Services for the Blind

Notice of Intent to Adopt Rules Without a Public Hearing

(1) Notice is hereby given that the State Department of Jobs and Training proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 through 14.28. The proposed rules will amend Minnesota Rules, parts 3321.0100 through 3321.1400, relating to Vending Stands and Business Enterprises of State Services for the Blind.

The proposed rules interpret Minnesota Statutes, section 248.07, subdivisions 7 and 8. These rules have been developed as authorized by Minnesota Statutes, section 248.07, subdivision 14a. (2) Persons interested in these rules will have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. (6) Any person requesting a public hearing should state his or her name and address, and is

encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes sections 14.131 through 14.20.

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

Chuck Hamilton
State Services for the Blind
1745 University Avenue
St. Paul, Minnesota 55104

Comments or requests for a public hearing must be received by the department by 4:30 p.m. on July 12, 1990. Any written material received by the agency will become part of the rulemaking record to be submitted to the Attorney General in the event the rules are adopted.

The proposed rules may be modified if the modifications are supported by data and comment and do not result in a substantial change in the proposed rules as noticed.

A copy of these rules in braille, audio tape and ink print is available for review from Chuck Hamilton at the above address.

The proposed amendments to rules will establish due dates for

payments from blind operators and impose penalties for significantly late payments and reports from operators. Furthermore, the proposed amendments will change certain requirements for the purchase of merchandise by operators. Other technical and housekeeping changes will also be proposed.

(12) Notice is hereby given that a Statement of Need and Reasonableness is now available. The Statement of Need and Reasonableness describes the need and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency, or copies may be obtained from Chuck Hamilton upon request at the above address.

(14) These proposed rules may affect small businesses as defined in Minnesota Statutes, section 14.115, subdivision 1. Pursuant to Minnesota Statutes, section 14.115, subdivision 2, five methods were considered by the agency to reduce the impact of the proposed rules on small businesses. A discussion of these methods can be found in the Statement of Need and Reasonableness.

(15) A fiscal note will not be prepared. The authority for these proposed rules, Minnesota Statutes, Chapter 248, was enacted before July 1, 1985. Therefore, these proposed rules need not include a fiscal note under exceptions provided by Minnesota Statutes, section 3.983, subdivision 3.

(9)

If no hearing is required upon adoption of the rules, the rules and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General from Chuck Hamilton at the above address.

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 adopted rules, must submit the written request to Chuck Hamilton.

Job Samargia, Commissioner
Department of Jobs and Training

In the Matter of the Adoption of the Rules of the Department of Jobs and Training Governing Vending Stands and Business Enterprises of State Services for the Blind.

DECLARATION OF COUNSEL

I, Steven B. Liss, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. There are no exceptions. For Attorney General billing purposes, the four-digit docket client code is 0402.

Dated: August 3, 1990.

Steven B. Liss

STEVEN B. LISS
Special Assistant
Attorney General

STATE OF MINNESOTA
DEPARTMENT OF JOBS AND TRAINING

In the Matter of the Proposed Adoption of the Rules of the State of Minnesota Governing Vending Stands and Business Enterprises of State Services for the Blind	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on June 11, 1990, and was sent on May 29, 1990, along with a copy of the proposed rules, by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt rules without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and the statement of need and reasonableness was available to the public.

(4) All persons were given the opportunity to submit comment on the rules for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rules were received by the agency. Therefore, the agency did not receive requests for a public hearing from 25 or more persons which were not subsequently withdrawn.

(7) No submissions or comments on the rules were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

No changes were made between the rules as proposed and the rules as adopted. Therefore, no substantive changes were made to the rules as adopted.

(8) The above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Vending Stands and Business Enterprises of State Services for the Blind, as proposed, are adopted this 18th day of July, 1990, (9) pursuant to authority vested in me by Minnesota Statutes, sections 268.0122, subdivision 5, and 248.07, subdivision 14a.

Joe Samargia
Commissioner of
Department of Jobs and Training