



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Services for the Blind	<input checked="" type="checkbox"/> Permanent Rule <input type="checkbox"/> Emergency Rule
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(1) Date of adoption: May 10, 1995

(2) Purpose: WACs 67-35-030, 210, 220, 230, 360, and 430 are amended due to changes in the Vendor-Agency relationship, per conditions under which vendors in the Business Enterprise Program are to participate. WAC 67-35-215 is a new WAC. WAC 67-35-350 is repealed.

(3) Citation of existing rules affected by this order:

Repealed: WAC 67-35-350.
 Amended: WACs 67-35-030, 210, 220, 230, 360, and 430.
 Suspended:

(4) Authority for adoption:

Statute: RCW 74-18
 Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 95-05-040 on 2/9/95 (date).
 Describe any changes other than editing from proposed to adopted version:
 None

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
 Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules	Emergency Rules
<input checked="" type="checkbox"/> 31 days after filing	<input type="checkbox"/> Immediately
<input type="checkbox"/> Other (specify) _____*	<input type="checkbox"/> Later (specify) _____

* (If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
 STATE OF WASHINGTON
 FILED

MAY 25 1995

TIME: 12:00
 WSR: 95-12-007

NAME (TYPE OR PRINT)
 Bonnie Jindra

SIGNATURE
Bonnie Jindra

TITLE
 Assistant Director

DATE
 5/25/95

AMENDATORY SECTION (Amending WSR 94-11-054, filed 5/10/94, effective 6/10/94)

WAC 67-35-030 Terms defined. The terms defined in this section shall have the indicated meaning when used in this chapter.

(1) "Agreement" means that document issued by the department to a blind licensee assigning responsibility for the management of a designated vending facility in accordance with these rules and the terms and conditions of the permit or contract.

(2) "Blind" means visual acuity of no more than 20/200 in the better eye with correcting lenses; or if visual acuity is greater than 20/200, a limitation in the field of vision of the better eye so that its widest diameter subtends an angle of no greater than 20 degrees, as determined by an examination by a physician skilled in diseases of the eye, or an optometrist, whichever the person chooses.

(3) "Blind licensee" or "licensee" means a person licensed by the department to operate a vending facility in the vending facility program, but who is not assigned a vending facility.

(4) "Blind vendor" or "vendor" means a person licensed by the department to operate a vending facility in the vending facility program and who is assigned a vending facility.

(5) "Contract" means the negotiated terms and conditions between the manager controlling federal or other property and the department covering the operation of a vending facility on federal or other property.

(6) "Cost of goods purchased and other operating expenses" this item of the income statement includes the cost of goods purchased and the operating expenses such as maintenance of equipment, rent, utilities, insurance, Social Security, workmen's compensation, pest control, delivery services, licenses, state and local taxes.

(7) "Department" means the Washington department of services for the blind.

(8) "Equipment" means all appliances, utensils, counters, cupboards, storage devices, furniture and other furnishings used in the operation of the vending facility, to which the department retains title.

(9) "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.

(10) "Gross income" is the aggregate of gross sales, all machine income received by vendors, rebates and any other income received by the vending operations.

(11) "License" means a written instrument issued by the department to a blind person authorizing that person to operate a vending facility on federal or other property.

(12) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, 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 ongoing operation of an individual facility after the initial establishment period.

(13) "Net proceeds" - (net profit) 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 blind vendors).

(14) "Other property" means property which is not federal property.

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

(16) "Public building" means any building which is owned by the state of Washington or any political subdivision thereof, and any space leased by the state of Washington or any political subdivision thereof in any privately-owned building: *Provided*, That any vending facility or vending machine under the jurisdiction and control of a local board of education shall not be included without the consent and approval of that local board.

(17) "Program" means the vending facility program, (also known as the business enterprises program) including all of the activities, obligations and relationships described in this chapter.

(18) "Set aside funds" means any income from vending machines on federal property received by the department and not paid to vendors as income under provision of 34 CFR, section 395.8 (a), (b), and (c).

(19) "Vending facility" means cafeterias, snack bars, vending counters, vending carts, vending machines or any combination of the above, at which food, tobacco, refreshments or sundries are offered for sale, and which operate under the vending facility program. Vending facilities will be identified by the following classifications:

(a) "Cafeteria" means a food dispensing vending facility capable of merchandising a broad variety of prepared foods and beverages. Characteristically, the cafeteria has specialized equipment, a food preparation area, and booths and tables for seating. Vending machines may be part of a cafeteria.

(b) "Other types of facilities" means those facilities not included under the cafeteria or vending machine, such as snack bars, lunch counters and dry stands which provide a variety of articles dispensed manually by the vendor.

(i) "Dry stand" means a vending facility which merchandises, among other things, tobacco, sundries and prepackaged food and refreshment items. Characteristically, the dry stand has no specialized equipment for refrigerating or heating foods or beverages, nor any food preparation area. Merchandise is consumed away from the dry stand. Vending machines may be a part of the dry stand.

(ii) "Lunch counter" means a vending facility which merchandises, among other things, lines of refreshment and food items suitable for a light meal. Characteristically, the lunch counter has specialized equipment for the refrigerating, cooking or

heating of foods and beverages, and has a limited food preparation area. Merchandise may be consumed at or away from the lunch counter. Vending machines may be part of the facility.

(iii) "Snack bar" means a vending facility which merchandises, among other things, limited lines of refreshment and prepared food items. Characteristically, a snack bar has specialized equipment for refrigerating or heating foods and beverages but has no food preparation area. Merchandise may be consumed at or away from the snack bar. Vending machines may be a part of the facility.

(c) "Vending machine facility" means a vending facility comprised of coin or currency operated machines merchandising, among other things, a variety of food and refreshment items. The vendor is responsible for the management of the machines and usually performs such functions as loading and servicing the machines and other customer-related services. Characteristically, there is no provision for booth or table seating at such a facility.

(20) "Vending machine" means any coin-operated machine offering food, refreshments, tobacco or sundries for sale.

(21) "Primary location" means any location that is acquired through the bid process pursuant to the provisions of WAC 67-35-070.

(22) "Nonprimary location" means any location that is bid per WAC 67-35-070 and is awarded for a temporary period of time not to exceed one year from the date of award.

(23) "Essential equipment" means those individual pieces of equipment, furnishings, and machinery which the department deems as basic and crucial to the operation of each particular vending facility.

(24) "Smallwares" means all other equipment, furnishings, and machinery not specifically listed by the department as "essential equipment" for each particular vending facility.

AMENDATORY SECTION (Amending Order 83-09, filed 12/15/83)

WAC 67-35-210 Department responsibility--(~~Initial equipment Initial stock and supplies~~) Essential equipment and smallwares. The department will provide (~~suitable initial~~) essential equipment ((necessary)) and initial smallwares the department deems appropriate for the efficient operation of the vending facility. (~~The department will provide funds for the initial stock and supplies, necessary business licenses, fees and deposits, and minimum operating cash required to commence operation of the facility, as determined by the vending facility program.~~) The right, title to, and interest in all initial equipment and smallwares will be vested in the department.

NEW SECTION

WAC 67-35-215 Vendor responsibility--Smallwares. The vendor is required to maintain all smallwares in good condition as established by the department at the time the vendor assumes operation of the facility. In the event that any smallwares must be replaced, the vendor will pay the cost of replacement.

In the event that a vendor should discontinue to operate the vending facility, the vendor or the vendor's heirs will furnish to the department an amount of smallwares equal to those initially provided for the vending facility, in suitable condition as determined by departmental policy.

AMENDATORY SECTION (Amending Order 83-09, filed 12/15/83)

WAC 67-35-220 (~~Title to initial equipment Right to~~) Department and vendor responsibility--Initial consumable stocks and cash. (~~The right, title to and interest in initial equipment as provided for in WAC 67-35-210 will be vested in the department. The right to and interest in the initial stock, and minimum operating cash provided under WAC 67-35-210 shall continue with the department to the extent that should the vendor discontinue to operate the vending facility, the vendor or vendor's heirs will furnish to the department an equal monetary amount of saleable stock and cash which may be transferred to the next vendor.~~) The department will provide funds for the initial consumable stocks and supplies, and minimum operating cash required to commence operation of the facility, as determined by departmental policy.

The vendor will be required to repay the department for the initial consumable stocks and supplies and operating cash according to a set repayment plan as outlined in departmental policy.

The right to and interest in the initial consumable stock and operating cash will remain with the department until the vendor has repaid the department in full. In the event that a vendor should discontinue to operate the vending facility, the vendor or the vendor's heirs will furnish to the department an amount of saleable stock as determined by departmental policy, and/or cash equal in monetary value to the amount currently owed to the department under the conditions of the repayment plan.

AMENDATORY SECTION (Amending WSR 94-15-052, filed 7/15/94, effective 8/15/94)

WAC 67-35-230 Department and vendor responsibility--Maintained facility and equipment. (1) The department will, within program resources, maintain or cause to be maintained each facility in good repair and attractive condition. The department will, within program resources, or in accordance with terms and

conditions of the permit or contract, replace, or cause to be replaced obsolete or worn-out equipment (-

~~(2) Vendors shall pay repair charges for each separate repair job on vending facility equipment of two hundred dollars or ten percent of the cost of repair, whichever is greater. For purposes of this subsection, repair or a repair job shall mean the cost associated with a single visit of a repair technician to a vending facility without respect to the amount of equipment being repaired, or multiple visits, and/or contact relative to the repair of a single item.~~

~~(3) When a vendor takes over the operation of a vending facility, the department will within program resources, pay for all repair charges during the first six months and the two hundred dollars or ten percent deduction will not apply.~~

~~(4) The remainder of the charges for repair or maintenance of vending facility equipment described in subsections (2) and (3) of this section shall be paid for from set aside funds. If set aside funds are entirely depleted, the vendor shall pay the costs of repair of vending facility equipment at his/her facility.~~

~~(5)) which has been deemed essential for the operation of the vending facility.~~

(2) When a vendor takes over the operation of a vending facility, the department will, within program resources, pay for all repair charges during the first six months of operation. After the first six months of operation, the vendor will be required to pay the cost of all repairs and maintenance on all facility equipment. Failure to promptly repair essential equipment will be grounds for immediate suspension of a vendor's operating agreement prior to an evidentiary hearing (WAC 67-35-430).

(3) The vendor will be responsible to exercise proper care of and maintain all equipment and furnishings assigned to the vending facility. This includes, but is not limited to, proper and regular cleaning and sanitation practices. A regular maintenance schedule will be provided by the vendor to the department for approval.

(4) For purposes of this section, vending facility equipment shall include equipment provided by the department and equipment furnished as a part of the contract or permit for which the department and operator assumes the responsibility of maintenance.

AMENDATORY SECTION (Amending Order 83-09, filed 12/15/83)

WAC 67-35-360 Vendor responsibility--((Miscellaneous equipment Initial stock and supplies Minimum operating cash)) Termination of agreement. ((It is the vendor's responsibility to maintain miscellaneous equipment, initial stock and supplies, and minimum operating cash originally furnished by the department, unless otherwise specified by the terms and conditions of a permit or contract.)) Any vendor whose agreement with the department has been terminated for any reason is responsible to return to the department miscellaneous equipment, smallwares, initial stock and supplies, and minimum operating cash equal in monetary value as determined by departmental policy to those originally furnished by the vending facility program. Any vendor refusing to comply with

the responsibilities in this section shall have their license terminated subject to the opportunity for a full evidentiary hearing.

AMENDATORY SECTION (Amending WSR 89-21-046, filed 10/13/89, effective 11/13/89)

WAC 67-35-430 Reasons for suspension of ((license)) operating agreement prior to evidentiary hearing. If the department determines that its right, title to and interest in a vending facility is in eminent jeopardy due to the action, or lack of action of the vendor or licensee, the department may suspend the ((license)) operating agreement of the vendor or licensee and remove the vendor or licensee from the vending facility, pending an informal resolution of the problem, a full evidentiary hearing, or the decision of an ad hoc arbitration panel. The department may suspend a vendor or licensee for the following reasons:

(1) Failure to provide the department with vendor financial reports, and to provide them within the established time frame.

(2) Failure to purchase vendor liability insurance for his/her vending facility as required in WAC 67-35-310 and/or failure to provide the department with proof of said insurance.

(3) The vendor ceases to meet any of the requirements to qualify as a licensee or vendor as required in chapter 67-35 WAC.

(4) The vendor or licensee abandons the vending facility. The vending facility shall be considered abandoned when no services are provided for three or more consecutive working days and/or when there is no designated employee in charge of the operation.

(5) When the department decides that the vending facility is not being operated in accordance with the law, applicable regulations, terms and conditions of the permit, and/or contract or the vendor agreement governing such vending facilities.

(6) Any willful or malicious destruction of, theft of, or any failure to exercise necessary care for the equipment furnished by the department or agency named in the permit and/or contract, inclusive of all repairs and maintenance as outlined in WAC 67-35-215 and 67-35-230.

(7) When the conduct of the vendor seriously interferes with any aspect of the operation of the vending facility. Such conduct includes, but is not limited to, the following:

(a) Fraud.

(b) Consumption of controlled substances and/or alcohol on the job.

(c) Inexcusable neglect of duties as a vendor.

(d) Embezzlement.

(e) Falsifying reports.

(f) Failure to submit to a medical eye examination when requested by the department.

(g) Any other actions or behavior which would seriously jeopardize the vending facility.

(h) Failure to pay taxes, fees, and/or debts arising from the operation of the vending facility.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 67-35-350 Vendor responsibility--Maintaining equipment.