

State of Washington

WASHINGTON STATE COMMISSION FOR THE BLIND

(name of governing body)

(agency name, if applicable)

Resolution No. \_\_\_\_\_

Administrative Order No. 80-03

(1) Be it resolved by the Washington State Commission for the Blind

acting at 3411 S. Alaska St., Seattle, Washington 98118

(place)

that it does promulgate and adopted the annexed rules relating to:

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 80-03-120 filed with the code reviser on 3-5-80. Such rules shall take effect:

- [X] pursuant to RCW 34.04.040(2).
[ ] at a later date, such date being \_\_\_\_\_

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

We, \_\_\_\_\_, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04. (1977 c 19 § 2) that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

- [ ] (a) This rule is promulgated pursuant to RCW \_\_\_\_\_ and is intended to administratively implement that statute.
[ ] (b) This rule is promulgated pursuant to RCW \_\_\_\_\_ which directs that the \_\_\_\_\_

(agency)

has authority to implement the provisions of \_\_\_\_\_

(name of act or RCW citation)

- [X] (c) This rule is promulgated under the general rule-making authority of the Washington State Commission for the Blind

(agency)

as authorized in RCW 74.17.040, 74.16.430(1) and 74-16.450

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this governing body is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED April 12, 19 80

STATE OF WASHINGTON FILED

MAY 16 1980

By Kenneth N. Hopkins, Director

Title

CODE REVISER'S OFFICE WSR 80-03-053



RULE PURPOSE AND IMPLEMENTATION STATEMENT

(a) To amend certain sections of WAC Title 67 Commission for the Blind Chapter 32 Vending Facility Program for the Blind, and add new sections.

(b) 1. Amendatory-WAC 67-32-060 Selecting A Licensee Or Vendor To Operate A Vending Facility-Notice.

The section is changed to allow for ten working days notice rather than two weeks.

2. Amendatory-WAC 67-32-070 Selecting A Licensee Or Vendor To Operate Vending Facility-Procedure.

Subsection (7) is added to provide for review of the selection process for correctness by those vendors or licensees who applied for a location.

3. Amendatory-WAC 67-32-150 Set Aside Funds-Use As Determined.

The rule is changed (subsection(1)) to provide for a fair, workable method of determining the dollar amount certain vendors in the Vending Facility Program for the Blind shall be required to pay for equipment repairs.

4. Amendatory-WAC 67-32-420 Termination of License-Termination Of Agreement-For Cause Only.

The rule is changed to provide for termination of the vendor's agreement as well as the vendor's license upon proper notice and/or show of cause in a full evidentiary hearing.

5. Amendatory-WAC 67-32-450 Termination of License-Disuse.

The rule is changed to remove the provisions for suspension of a licensee's license for non-participation in the Vending Facility Programs. The rule now calls for termination after notice and/or a full evidentiary hearing.

6. Amendatory-WAC 67-32-480 Administrative Review-Who-When-Where.

The rule is changed to include provisions for reimbursing a vendor for certain expenses that might be incurred while going to and attending an administrative review to which the vendor is a party. The expenses covered are: transportation, reader or other communication services and a relief operator.

7. New-WAC 67-32-045 Licensee An Individual Person-Not A Corporate Entity.

Provides that only blind individuals may be licensed for the purposes of Chapter 32 and other Commission programs, but does not prohibit said individuals from otherwise incorporating.

8. New-WAC 67-32-075 Selection Of A Licensee Or Vendor To Operate A Vending Facility During A Leave Of Absence Of A Vendor.

Provides that an interim operator of a location may be a licensee or a vendor and that the licensee or vendor will be selected, recompensed and otherwise receive considerations to ensure his/her status as a vendor or licensee while serving as an interim operator for a vendor on a leave of absence.

9. New-WAC 67-32-415 Leave Of Absence For Prolonged Illness Or Physical Incapacity.

Provides for length of leave of absence, determination of illness or physical incapacity by a physician; termination of the leave of absence by medical determination or retraining; termination of license and/or agreement if vendor unfit to resume responsibility for location; selection of an interim operator and disposition of excess profits to the Business Enterprises Revolving Fund.

10. New-WAC 67-32-425 Termination Of Vendor's Agreement-Not Affecting Licensure.

Provides for termination of a vendor's agreement to operate a specific location when a vendor leaves that location for reasons that do not affect his/her status as a licensee.

(c) Sue Ammeter, Assistant Director of Administrative Services, is responsible for the drafting of the rules. Lori Engles, Business Enterprises Supervisor, is responsible for implementing the rules. Don Brown, Assistant Director of the Orientation and Training Center, is responsible for enforcement of the rules. All are located at the Commission headquarters at 3411 South Alaska St., Seattle, Washington 98118, telephone number (206) 721-4422; SCAN 339-4422.

(d) These rules, new and amended, have been adopted by the Commission Board as of April 12, 1980. The rules, as adopted, were supported by all concerned. There was no stated opposition orally or in writing.

(e) The rules, as adopted reflect intensive review, discussion and contributions from Commission staff members; the Commission Board; the State Blind Vendors Committee and other vendors. Ample opportunity for public review and comment has been provided in accordance with RCW 34.08.020 and RCW 34.04.025.

NEW SECTION

WAC 67-32-045 LICENSEE AN INDIVIDUAL PERSON - NOT A CORPORATE ENTITY. The status of a licensee is a relationship between the commission and an individual who is blind. A corporation cannot receive a license or otherwise receive services and considerations under this chapter or other commission programs. This rule will not affect the individual's right to establish a corporation for purposes other than services and considerations under this chapter or other commission programs.

AMENDATORY SECTION (Amending Order 79-01, filed 7-10-79)

WAC 67-32-060 SELECTING A LICENSEE OR VENDOR TO OPERATE VENDING FACILITY - NOTICE. When a vending facility becomes available a "notice of available facility" is prepared by the vending facility program staff and sent to all licensees and vendors. The "notice of available facility" will contain sufficient information to enable licensees and vendors to determine if they are interested in applying to become the vendor in the available facility. A closing time and date for accepting applications is specified in the "notice", but in no event shall the closing time be less than ((two weeks)) ten business days from the date of mailing, unless the Commission declares an emergency requiring less than ((two weeks)) ten business days notice. Applications may be accepted in writing or by telephone. Lack of response from a licensee or vendor within the allotted time period will be considered to be a negative response. Applications are time and date stamped when they are received.

AMENDATORY SECTION (Amending Order 79-01, filed 7-10-79)

WAC 67-32-070 SELECTING A LICENSEE OR VENDOR TO OPERATE VENDING FACILITY - PROCEDURE. (1) To select a licensee or vendor to operate an available vending facility, a basic evaluation score is computed for each licensee or vendor. The basic evaluation score will reflect an operator's level of competency as measured by the financial activities of the vending facility and compared to vending facilities which operations are more similar than dissimilar. To achieve relative ranking of vendor and licensee effectiveness, vending facilities have been grouped into ten classifications: Dry stands; snack bars under \$100,000 annual gross sales; snack bars over \$100,000 annual gross sales; lunch counters under \$100,000 annual gross sales; lunch counters over \$100,000 annual gross sales; cafeterias under \$100,000 annual gross sales; cafeterias from \$100,000 to \$200,000 annual gross sales; cafeterias over \$200,000 annual gross sales and/or those with limited income percentage; vending machines grouped to form a facility; and commission training cafeteria. For each group of vending facilities, an average percent is calculated for each item used in the evaluation. Points are assigned to percentages which deviate from the average to reward superior management and to discourage overpricing and excess profiteering. One point for each year of experience in the vending facility program up to five years and .2 point for each year of experience in the vending facility program beyond five years is added to the basic evaluation score to obtain the final evaluation score. Each federal fiscal year the average percentage for the three items of evaluation will be calculated for each of the ten groups of vending facilities, and vendors shall be informed in writing of the average percentages and to which classification their vending location is assigned. Any vending facility which, as a result of modification, belongs in a different facility classification will be assigned to that classification and will use the average percentages applicable to that classification.



(2) The basic evaluation score for a vendor is determined by using three items reported on the vendor's quarterly report: Cost of merchandise sold; all other operating costs; and net profit. The vendor will separately report the value of any volunteer labor received which is essential to the operation of the facility; the cost of purchasing; leasing or renting equipment; and income received from any personnel training programs for the purpose of adjusting the category of "all other operating expenses." Income received from vending machines not managed or operated by the vendor shall not be considered in the evaluation process. Cost of merchandise sold, adjusted all other operating expenses, and adjusted net profit is determined and converted into a percentage of gross sales. The percentages in each category are converted to points as shown in WAC 67-32-080, and the sum of the three separate scores becomes the basic evaluation score. The basic evaluation score for each of the most current two quarters will be averaged, and this average plus points earned by seniority becomes the evaluation score except that the quarter in which a licensee or operator assumes responsibility for a new or different location shall not be included in the two most current quarters used in determining an evaluation score.

(3) A trainee shall receive a basic evaluation score by the same method as set forth in subsection (2) of this section except that the period of basic evaluation shall include those months when a trainee is in certification training and is managing a vending facility under the training program of the commission for the blind. The basic evaluation score shall be computed monthly, and adjustment factors are not used.

(4) The licensee or vendor applying for an available facility and having the highest evaluation score shall be designated the vendor of the available facility except as provided for in subsections (5) and (6) of this section.

(5) No vendor or licensee who has been designated to operate an available vending facility will within the next six months thereafter be designated to operate a subsequently available vending facility, unless such vendor(s) or licensee(s) is(are) the only applicant.

(6) The loss of any vending facility to the vending facility program for reasons beyond the control of the vendor assigned that facility, as determined by the staff of the vending facility program, shall permit assignment of the next available vending facility to that vendor without respect to other provisions of this section. Any vendor so assigned may make application for a subsequently available facility without respect to subsection (5) of this section.

(7) A licensee or vendor who has applied for a vending facility under WAC 67-32-060 may upon request receive a review of the correctness of the selection process from the director of the commission or his/her designee. The review must be requested within ten calendar days of the completion of the selection process for which the licensee or vendor has applied. The director or his/her designee will inform the licensee or vendor of the review findings within ten days of the request.

#### NEW SECTION

WAC 67-32-075 SELECTION OF A LICENSEE OR VENDOR TO OPERATE A VENDING FACILITY DURING A LEAVE OF ABSENCE OF A VENDOR. When a vendor is granted a leave of absence in accordance with WAC 67-32-415, all licensees and vendors will be informed of the available location. The terms and conditions of the leave of absence and selection of the licensee or vendor will be in accordance with the selection processes utilized for the selection for any available location. A licensee or vendor assuming the responsibility for a location and entering into an agreement in accordance with WAC 67-32-090 of this chapter will, during a leave of absence of the assigned vendor, be entitled to the profits, or salary or profits, generated by the location in accordance with all contracts and agreements, and will be given thirty days notice prior to the termination of the leave of absence.

A licensee assuming responsibility for a location, who wishes to be considered for selection into an available location as a vendor, will retain his/her certification score until a score can be given based upon his/her performance in the location in the same way that all vendors achieve scores.

AMENDATORY SECTION (Amending Order 79-01, filed 7-10-79 and supersedes emergency notice 80-02 filed 2-21-80)

WAC 67-32-150 SET ASIDE FUNDS - USE AS DETERMINED. Vending machine income received by the commission as described in WAC 67-32-140(4) shall be known as set aside funds. Set aside funds shall be used for (~~the purchase of initial stock and supplies~~) repair of vending facility equipment, the replacement of obsolete or worn-out vending facility equipment, the purchase of new (~~or additional~~) vending facility equipment (~~(7)~~) in existing facilities, management services, the purchase of liability insurance and the costs necessary to the conduct of the state blind vendors committee.

(1) Vendors whose income from their vending facility is at the national average or above for all vendors as determined each federal fiscal year on the basis of each prior year's operation shall pay repair charges for each separate repair job on vending facility equipment of fifty dollars or ten percent of the (~~current or replacement~~) cost of the (~~the equipment,~~) repair, whichever is greater. For purposes of this paragraph, 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.

(2) Vendors whose income from their vending facility is below the national average of such income for all vendors as determined each federal fiscal year on the basis of each prior year's operation shall pay a voluntary amount for each separate repair job on vending facility equipment at their facility.

(3) The remainder of the charges for repair or maintenance of vending facility equipment described in subsections (1) and (2) 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.

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

NEW SECTION

WAC 67-32-415 LEAVE OF ABSENCE FOR PROLONGED ILLNESS OR PHYSICAL INCAPACITY. A vendor in the business enterprises program may request and may be granted a leave of absence for a period of up to twelve months.

A vendor may request a leave of absence when the vendor is unable to maintain his/her responsibilities in a location by reason of a physical or mental condition. A leave of absence will be granted to a vendor:

- (1) Only when such request is initiated by that vendor; and
- (2) When the mental or physical condition is verified by a medical doctor licensed to practice in the state of Washington; and
- (3) Such condition is so prolonged and/or so serious as to cause strong doubt on the part of the vendor and the agency as to the vendor's capacity to maintain full management of his/her location; and
- (4) For a total maximum period not to exceed twelve months.

The vendor who has been granted a leave of absence will retain his/her license. His/Her agreement to manage a location will be held in abeyance during the leave of absence.

A leave of absence will be terminated by the commission at the end of twelve months or sooner, and the vendor will resume the responsibility for his/her location and the agreement reinstated when the mental or physical condition no longer prohibits the vendor from maintaining responsibilities for his/her location.

(1) When verified by a medical doctor licensed to practice in the State of Washington; and/or

(2) When verified by a statement of completion of a program of training or retraining designed to overcome the effects of the mental or physical condition necessitating a leave of absence.

A leave of absence will be terminated by the Commission at the end of twelve months or sooner, and the vendor's license and/or agreement will be terminated:

(1) When the mental or physical condition is of such duration or severity, as verified by a medical doctor licensed to practice in the state of Washington, that it renders the vendor unable to resume responsibility for the management of that location; and/or

(2) When the vendor fails to complete a program of training or retraining designed to overcome the effects of the mental or physical condition and is unable to resume responsibility for the management of that location.

Upon granting a vendor a leave of absence, the commission will assume responsibility for that vendor's location. The commission will select a licensee or vendor to manage the location. In the event a licensee or vendor is not available to assume the responsibility of a location while the vendor is on a leave of absence, the commission may make such arrangements as necessary to assure the ongoing management of such location. Any profits available in excess to those necessary to secure the management of the location shall accrue to the business enterprises revolving fund.

AMENDATORY SECTION (Amending Order 79-01, filed 7-10-79)

WAC 67-32-420 TERMINATION OF LICENSE - TERMINATION OF AGREEMENT ((-)) FOR CAUSE ONLY. The license to participate in the program is issued for an indefinite period of time. However, the vendor's license ((-)) and vendor's agreement with the commission may be terminated after a thirty-day notice and/or after affording the vendor or licensee an opportunity for a full evidentiary hearing if the commission finds that the vending facility is not being operated in accordance with its rules, the terms and conditions of the permit or contract, or the terms and conditions of the agreement between the vendor and the commission. Following the completion of the thirty-day notice the vendor's license will be terminated ((-)) and the vendor's agreement shall be terminated pending completion of the full evidentiary hearing process, the convening of any ad hoc arbitration panel and court review. Following termination of the vendor's agreement the commission will operate the vending facility until any grievance procedure is completed. The net profit from the operation of the vending facility during this time will be placed in trust in the business enterprises revolving fund for disbursement in accordance with any final decision of the grievance process.

NEW SECTION

WAC 67-32-425 TERMINATION OF VENDOR'S AGREEMENT - NOT AFFECTING LICENSURE. A vendor's agreement will be terminated without affecting licensure under any of the following three conditions:

1. When a vendor ceases to be a vendor of an existing vending facility by voluntary withdrawal in writing;

2. When the vending facility ceases to be a vending facility by revocation of the permit or contract by either the commission or by building management;



3. when the vendor signs a new vendor agreement.

AMENDATORY SECTION (Amending Order 79-01, filed 7-10-79)

WAC 67-32-450 ((SUSPENSION-OR)) TERMINATION OF LICENSE-DISUSE. If after two years the licensee has not participated ((as-a-vendor)) in any of the vending facility ((program)) programs as identified in this chapter, the commission will ((suspend)) terminate the license after a thirty-day notice and/or after affording the licensee an opportunity for a full evidentiary hearing.

AMENDATORY SECTION (Amending Order 79-01, filed 7-10-79)

WAC 67-32-480 ADMINISTRATIVE REVIEW - WHO - WHEN - WHERE. The administrative review will be conducted by the supervisor of the vending facility program unless the supervisor is a party to the decision, action or inaction being reviewed, in which case the supervisor's supervisor shall conduct the administrative review. The administrative review will be held and a decision rendered within fifteen days of receipt of a request for administrative review. The review will be held at a commission office or in a location selected by the commission in the county in which the licensee or vendor resides. Upon request of the vendor or licensee, the commission may arrange and pay for transportation from the vendor's or licensee's home to the place of the hearing and return. The rate of payment will be at the current state allowance for state employees. Upon request of the vendor or licensee, the commission may arrange for and pay a reader or other communication service to be available to the vendor or licensee for the purpose of reviewing materials directly pertinent to the administrative review. The reader or other communication service will be paid the current federal minimum wage. Upon request of the vendor, the commission may arrange for and pay a relief operator during the vendor's absence from the vending facility for the purpose of administrative review. Within funds available the costs (1) for transportation, (2) for a reader or other communication service, and (3) for a relief operator shall be paid as management services as set forth in WAC 67-32-150. After the conclusion of the administrative review the person conducting the administrative review will certify his/her findings to the licensee or vendor in writing, specifying in detail the findings and decision of the administrative review, and informing the licensee or vendor of his/her right to request a full evidentiary hearing if dissatisfied with the decision.