

State of Washington

Department of Services for the Blind

(agency name)

Administrative Order No. 85-12

(1) I, Paul Dziedzic, director of

Department of Services for the Blind

do promulgate and adopt at 921 Lakeridge Dr., Rm. 202, FW-21, Olympia, WA 98504-0088 (place)

the annexed rules relating to:

Revise Chapter 67-35 Vending Facility Program for the Blind

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

This action is taken pursuant to Notice No. WSR 85-15-075 filed with the code reviser on 7/22/85. These rules shall take effect:

- [X] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being

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

I, find that an emergency exists and that this 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 the emergency is:

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

(3) Pursuant to the requirements of RCW 34.04.026 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)

(c) This rule is promulgated under the general rule-making authority of the Department of Services for the Blind

(agency)

as authorized in RCW 74.18

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

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

STATE OF WASHINGTON APPROVED AND ADOPTED FILED

August 30, 19 85

By Paul Dziedzic

Paul Dziedzic, Director Title

AUG 30 1985

CODE REVISER'S OFFICE WSR 85-18-048

AMENDATORY SECTION (Amending Order 84-06, filed 4/16/84)

WAC 67-35-070 SELECTING A LICENSEE OR VENDOR TO OPERATE VENDING FACILITY--PROCEDURE. (1) To select a licensee or vendor to operate an available vending facility, a score is computed for each licensee or vendor. The two vendors ~~((or))~~ and two licensees having the two highest scores in each respective category as defined in WAC 67-35-030 will be interviewed by a panel representative of the vendors committee, the BEP director, and the building manager. The vendor or licensee who will operate the available vending facility will be chosen in this interview.

(2) Vendor score determination:

(a) A basic evaluation score will reflect a vendor's level of competency, as measured by the financial activities of the vending facility compared with vending facilities whose operations are similar.

(b) A vendor will receive one additional point for each year of experience in the vending facility program up to five points.

(c) The basic evaluation score for a vendor is determined by using three items reported on the vendor's monthly report: Gross income, cost of goods purchased and other operating expenses, and net proceeds. The cost of goods purchased and other operating expenses, gross income and net proceeds is determined and converted into a percentage of gross income. The percentages in each category are converted to points, as shown in WAC 67-35-080, and the sum of the two separate scores become the basic evaluation score. The basic evaluation score for each of the most current four quarters will be averaged, and this average plus points earned by seniority becomes the evaluation score.

(d) To achieve relative ranking of vendor and licensee effectiveness, vending facilities have been grouped into three classifications: Cafeterias, vending machine facilities, and other facilities. Other facilities consist of dry stands, snack bars and lunch counters. 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. The vendors committee in conjunction with the director of the business enterprise program will group similar vending facilities.

(e) For each group of vending facilities, the national average percentage is used to calculate each item used in the evaluation. These average percentages will be taken from the previous year's Randolph-Sheppard Vending Facility Program Annual Report, which is provided by the United States Department of Education, Office of Rehabilitation Services Administration. The percentages used in the evaluation are the net proceeds to gross income and the cost of goods purchased and other operating expenses. Each federal fiscal year, the vendors shall be informed in writing of the average percentages and to which classification their vending location is assigned.

(f) Any vendor who has not provided the department with current monthly financial statements will not be eligible to bid on available locations.

(3) Licensee score determination:

(a) Individuals completing department sponsored training. The licensee's score will be the total points correct on the preliminary tests, the final examination, and the Randolph-Sheppard test. The BEP director will assure that the potential number of points remain consistent from quarter to quarter.

(b) Challenge test licensee's basic evaluation score will be the score he/she receives on the challenge test.

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

WAC 67-35-100 POSTEMPLOYMENT SERVICES. A vendor shall be provided with such postemployment services as are necessary to assure that the maximum vocational potential of each blind vendor is achieved. The postemployment services will be provided by the vocational rehabilitation counselor. Postemployment services will be provided in accordance with ((45)) 34 CFR, section ((4364-40)) 361.42 (a) (13).

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

WAC 67-35-130 BLIND VENDORS COMMITTEE--PURPOSE. (1) The blind vendors committee shall:

((1)) (a) Actively participate with the department in major administrative decisions and policy and program development decisions affecting the overall administration of the vending facility program;

((2)) (b) Receive and transmit to the department grievances at the request of vendors, and serve as the advocates for such vendors in connection with such grievances;

((3)) (c) Actively participate with the department in the development and administration of the department's system for the transfer and promotion of vendors;

((4)) (d) Actively participate with the department in the development of training and retraining programs for vendors;

((5)) (e) Sponsor, with the assistance of the department, meetings and instructional conferences for vendors.

(2) The department is ultimately responsible for administration of the vending facility program. The department will consider any blind vendor committee written recommendation. If the department does not adopt recommendations proposed by the blind vendor's committee, the department shall notify the committee in writing within thirty days.

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

WAC 67-35-140 VENDING MACHINE INCOME DISPERSED BY DEPARTMENT. Vending machine income from vending machines on federal property which has been received by the department pursuant to ((45)) 34 CFR, section ((4369-32)) 395.32 (b), (c) and (d) shall be paid to each blind vendor (if any) operating a vending facility on such federal property in an amount not to exceed the average income of all blind vendors in the state of Washington as determined each fiscal year on the basis of each prior year's operation, or the average net income of all blind vendors in the United States, whichever is less.

(1) No vendor shall receive less vending machine income than he/she was receiving during the calendar year 1973 as a direct result of any limitation imposed on such income by this section.

(2) 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.

(3) The department shall disperse vending machine income to vendors on at least a quarterly basis.

(4) Vending machine income from vending machines on federal property received by the department and not eligible for distribution to blind vendors under the provisions of this section shall be retained by the department.

(5) Vending machine income which is retained under subsection (4) of this section shall be used by the department for the establishment

and maintenance of retirement or pension funds, for health insurance contributions, and for the provision of paid sick leave and vacation time, for vendors, if it is so determined by a majority vote of all vendors after the department has provided to each vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the department for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors.

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

WAC 67-35-180 ACCESS TO PROGRAM AND FINANCIAL INFORMATION. The department shall provide to any interested person program and financial information and interpretation concerning the operation of the program, except that confidential information concerning any applicant, trainee, licensee or vendor shall not be released directly or indirectly without written permission of such applicant, trainee, licensee, or vendor as specified in ((Title-45)) 34 CFR, ((Chapter--87 Part--4364-47)) 361.49; chapter 42.17 RCW and attendant regulations; and department policy B-21.

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

WAC 67-35-190 DEPARTMENT RESPONSIBILITY--DEVELOPMENT OF NEW VENDING FACILITY LOCATIONS. (1) The staff of the vending facility program will select suitable locations for vending facilities and negotiate with the property management a permit or contract specifying the space to be occupied, hours of operation, services and articles to be vended, equipment to be installed and other items as required. The permit or contract will be executed between the department and the management of the property where the vending facility is located.

(2) A suitable location or site shall mean an area fully accessible to vending facility patrons and having:

(a) A minimum of two hundred fifty square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(b) 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; and

(c) A building population that is determined by the business enterprise program staff to be sufficient to provide the blind vendor with reasonable income.

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

WAC 67-35-280 DEPARTMENT RESPONSIBILITY--INSPECTION--REQUIRED CONTACTS. The vending facility program staff will make ((bimonthly)) annual inspections of the vending facility. The results will be reviewed with the vendor to determine if improvements can be made, and if so, what actions should be taken. ((To-the-maximum-extent-possible the-bimonthly-inspections-will-occur-at-various-times-of-the-day-so-as-to-include-the-different-activities-of--the--vending--facility;)) The vending facility program staff upon adequate notice to the vendor shall inspect records and reports kept by the vendor.

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

WAC 67-35-310 PUBLIC LIABILITY INSURANCE. The vendor shall obtain and maintain continuously public liability insurance with limits of liability not less than:

\$500,000.00 each person personal injury,
 \$500,000.00 each occurrence personal injury, and
 \$500,000.00 each occurrence property damage; or
 insurance coverage specified in the permit or contract,
 ((which-ever)) whichever is greater.

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

WAC 67-35-350 VENDOR RESPONSIBILITY--MAINTAINING EQUIPMENT. The vendor will be responsible to exercise proper care of and maintain all equipment and furnishings assigned to the facility including proper cleanliness and mechanical repair of equipment, unless otherwise specified by the terms and conditions of a permit or contract. If the vendor fails to maintain equipment which results in necessary repair, the department may require necessary repair of such equipment and the cost of such required repair ((may-become-the-sole-responsibility-of-the-vendor)) will be paid as outlined in WAC 67-35-230.

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

WAC 67-35-460 RELICENSING. When a licensee's or vendor's license has been suspended by the department, he/she must meet the requirements in WAC 67-35-040, and must demonstrate competency in meeting the criteria of the training course through a period of evaluation or retraining ((at-the-department-of-services-for-the-blind-in-order-to-become-relicensed--Upon-relicensing,-the-licensee-or--vendor shall-retain-his/her-last-previously-established-evaluation-score)) as outlined in WAC 67-35-055. Upon completion of the training/evaluation the individual will take the challenge test as indicated in WAC 67-35-056.

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

WAC 67-35-520 FULL EVIDENTIARY HEARING--DECISION IN WRITING. Within ten working days after the conclusion of the full evidentiary hearing the director of the department or his/her designee will certify findings to the licensee or vendor in writing specifying in detail the findings and the decision reached, and informing the licensee or vendor of his/her right to request from the secretary of the United States Department of ((Health,)) Education ((and-Welfare)) the convening of an ad hoc arbitration panel as provided for in ((45)) 34 CFR, section ((4369-43)) 395.13 and section ((4369-6(e))) 395.6(e).