



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Services for the Blind

- Permanent Rule
 Emergency Rule

(1) Date of adoption: April 29, 1992

(2) Purpose: Housekeeping

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

Repealed: 67-35-080

Amended: 67-35-070, 67-35-030, 67-35-060, 67-35-080

Suspended:

(4) Authority for adoption:

Statute: RCW 74.18

Other Authority:

(5 1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 92-07-011 on March 6, 1992 (date)

Describe any changes other than editing from proposed to adopted version:

(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

31 days after filing

Other (specify) _____ *

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

Emergency Rules

Immediately

Later (specify) _____

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

APR 29 1992

TIME: 3:27 ^{AM} _{PM}

WSR: 92-10-024

NAME (FOR DOCUMENT)

Bonnie Jindra

TITLE

Bonnie Jindra

Assistant Director-Administration

DATE
4/29/92

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

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) "Challenge test licensee" means a person who has prior work experience and/or training in food service and food service management and who takes the challenge test and is licensed by the department to operate a vending facility in the vending facility program.

(6) "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.

(7) "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.

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

(9) "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.

(10) "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.

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

(12) "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.

(13) "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.

(14) "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).

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

(16) "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.

(17) "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.

(18) "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.

(19) "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).

(20) "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) ("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.

(c) "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.

(d) "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.

(e) "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.

(f) (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.

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

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

(23) "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.

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

WAC 67-35-060 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 ten business days from the date of mailing, unless the department declares an emergency requiring less than ten business days notice. (~~Applications may be accepted in writing or by telephone.~~) Only written applications will be accepted. 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 85-12, filed 8/30/85)

WAC 67-35-070 SELECTING A ((LICENSEE OR)) VENDOR OR LICENSEE TO OPERATE A PRIMARY LOCATION VENDING FACILITY((--PROCEDURE)). (({+}--To select--a--licensee--or--vendor--to--operate--an--available--vending--facility, a--score--is--computed--for--each--licensee--or--vendor,--The--two--vendors--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 reports: 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. When a primary location vending facility becomes available, the business enterprise staff will send a written "notice of availability" to all vendors and all licensees as indicated by WAC 67-35-060.

A licensee or vendor bidding on the available primary location must submit their interest in writing to the department by 5:00 p.m. on the closing date of the bid. Bids received after the closing time and date will not be considered and the bids will be returned to the bidder.

ELIGIBILITY REQUIREMENTS TO BID ON A PRIMARY LOCATION

To be eligible to bid on a primary location the following must apply:

(1) A vendor must have been assigned to and have actively operated their present location for a minimum of twelve months. If there are no eligible bidders on a primary location, bids will be accepted from vendors who are eligible and have less than twelve months at their present location.

(2) Vendors must have provided the department with current monthly financial statements and have shown a cumulative total net profit on their last twelve months financial statements. Vendors who have not operated a vending facility for twelve consecutive months must use their certification test score for bidding purposes.

(3) Former vendors, who operated a vending facility within the last twelve months, and have provided the department with their most current monthly financial statements, must show a cumulative total net profit on their last twelve months financial statement. If they have not been a business enterprise vendor within the last twenty-four months, they will be required to take the certification test and they will use this score for bidding purposes.

(4) Licensees must have completed the agency sponsored training program and have taken the certification test and received a passing score of seventy percent or better.

(5) Vendors, former vendors, and licensees must include a completed job application with their bid indication. Additional information is encouraged but is not a replacement for the application.

(6) Be current in the payment of all federal and state taxes, Social Security taxes, unemployment taxes, and worker's compensation.

(7) Not owe the department of services for the blind for any back rents, missing equipment, or back inventories.

INTERVIEW PANEL COMPOSITION

The interview panel will include one representative of the business enterprise program, one representative of the vendors committee, and one representative of the building management of the available location.

APPLICATION SCREENING PROCESS

The interview panel will receive and review all of the applications of the vendors who responded to the notice of availability plus applications of the licensees with the top two scores on the certification test.

Applicants will be selected based on their education and prior work experience in: Operating a similar food service facility to the one on the notice of availability, operating a different type of food service facility, participation in the business enterprise program all state meetings, and vendor committee meetings, or other program support and career enhancement training programs at colleges or universities.

Each panel member will select five applicants. Those applicants as well as the two licensees will be scheduled for an interview. The total number of applicants to be interviewed will not exceed seventeen.

THE INTERVIEW PROCESS

During the interview the panel will complete an applicant rating form for each applicant. The panel will rate each applicant on the interview questions and will use those ratings as guidelines for final selection. The panel selects the applicant who will operate the location.

All interviewed applicants will be notified of the results of the interview.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 67-35-080 VENDOR SCORING--EXPLANATION.