

Chapter 67-35 WAC

VENDING FACILITY PROGRAM FOR THE BLIND

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

67-35-055 Licensee—Former or current out-of-state. [Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-055, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-055, filed 12/15/83. Formerly WAC 67-32-055.] Repealed by WSR 93-09-013, filed 4/12/93, effective 5/13/93. Statutory Authority: Chapter 74.18 RCW.
67-35-056 Challenge test licensee. [Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-056, filed 4/16/84.] Repealed by WSR 93-09-013, filed 4/12/93, effective 5/13/93. Statutory Authority: Chapter 74.18 RCW.
67-35-080 Vendor scoring—Explanation. [Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-080, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-080, filed 12/15/83. Formerly WAC 67-32-080.] Repealed by WSR 92-10-024, filed 4/29/92, effective 5/30/92. Statutory Authority: Chapter 74.18 RCW.
67-35-350 Vendor responsibility—Maintaining equipment. [Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-350, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-350, filed 12/15/83. Formerly WAC 67-32-350.] Repealed by WSR 95-12-007, filed 5/25/95, effective 6/25/95. Statutory Authority: Chapter 74.18 RCW.

WAC 67-35-010 Description—Purpose. The vending facility program for the blind is a part of the vocational rehabilitation program for the blind. The purpose of the vending facility program is to provide increased employment opportunities for blind citizens of the state, and at the same time, provide a visible demonstration of the normal skills of blind persons. The Washington state department of services for the blind, vending facility program, provides training and placement of blind persons in vending facilities. The primary function of this program is to provide the opportunity for the blind person to become a successful, independent business person. This is accomplished through varied informative training programs, establishment and maintenance of vending facilities, continuous professional guidance and administrative support. By legislation, blind persons participating in the vending facility program are given preference in the operation of vending facilities on federal, state, county, municipal, and other local governmental property.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-010, filed 12/15/83. Formerly WAC 67-32-010.]

WAC 67-35-020 Application—How to apply. The public may obtain additional information about the program,

including how to apply for services by contacting the business enterprise program staff at the Department of Services for the Blind, P.O. Box 40933, Olympia, WA 98504-0933, phone (360) 586-1224, toll-free 1-800-552-7103. An application for service under the business enterprise program must be made to a vocational rehabilitation counselor located in any office of the department of services for the blind.

[Statutory Authority: Chapter 74.18 RCW. WSR 96-20-076, § 67-35-020, filed 9/30/96, effective 10/31/96; WSR 89-21-046, § 67-35-020, filed 10/13/89, effective 11/13/89. Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-020, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-020, filed 12/15/83. Formerly WAC 67-32-020.]

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 C.F.R., 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.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-030, filed 5/25/95, effective 6/25/95; WSR 94-11-054, § 67-35-030, filed 5/10/94, effective 6/10/94; WSR 93-10-067, § 67-35-030, filed 5/3/93, effective 6/3/93; WSR 92-10-024, § 67-35-030, filed 4/29/92, effective 5/30/92. Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-030, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-030, filed 12/15/83. Formerly WAC 67-32-030.]

WAC 67-35-040 Licensing applicants. To become a blind licensee, the applicant must meet the following requirements:

- (1) Blind as defined in WAC 67-35-030(2);
- (2) A citizen of the United States;
- (3) Determined eligible for vocational rehabilitation services under 34 C.F.R., section 361.33;
- (4) Found by a vocational rehabilitation counselor's thorough diagnostic study to possess adequate alternative skills to the use of vision in reading, writing and independent travel;
- (5) Be referred to the business enterprise program by a vocational rehabilitation counselor;

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(6) Receive a passing grade on the business enterprise test;

(7) Successfully complete a vendor training program including on-the-job training arranged by the business enterprise staff.

[Statutory Authority: Chapter 74.18 RCW. WSR 93-09-013, § 67-35-040, filed 4/12/93, effective 5/13/93. Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-040, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-040, filed 12/15/83. Formerly WAC 67-32-040.]

WAC 67-35-045 Licensee an individual person—Not a corporate entity. The status of a licensee is a relationship between the department and an individual who is blind. A corporation cannot receive a license nor otherwise receive services and considerations under this chapter or other department 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 department programs.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-045, filed 12/15/83. Formerly WAC 67-32-045.]

WAC 67-35-050 Licensee training. The department operates a training program for those who have met the requirements in WAC 67-35-040. In accepting applicants into the training program, preference is given to those who are in need of work, otherwise applicants are entered into the program according to the earliest date of application. The department provides or causes to be provided a program which includes training and experience with written criteria which the trainee must achieve. The training program is of undetermined length, and the time of completion depends upon the trainee's ability to meet the criteria set forth in the program. Upon successful completion of the program, the trainee receives a license and is eligible for benefits granted a licensee in this chapter.

[Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-050, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-050, filed 12/15/83. Formerly WAC 67-32-050.]

WAC 67-35-051 Licensees—Geographic availability—Certification. Licensees are required to indicate geographic availability at time of certification. Any licensee who fails to bid on an available vending facility within the geographic area of availability will be removed from the bidding process and will be required to request reinstatement to the bidding process. Their reinstatement will be determined by the business enterprise director in conjunction with the vendors' committee.

[Statutory Authority: 74-18 [chapter 74.18 RCW]. WSR 95-01-066, § 67-35-051, filed 12/15/94, effective 1/15/95.]

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

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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. 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 date stamped when they are received.

[Statutory Authority: Chapter 74.18 RCW. WSR 92-10-024, § 67-35-060, filed 4/29/92, effective 5/30/92. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-060, filed 12/15/83. Formerly WAC 67-32-060.]

WAC 67-35-070 Selecting a vendor or licensee to operate a primary location vending facility. 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

(1) If only one otherwise eligible (see subsections (2) through (8) of this section) vendor or licensee bids on an available vending location, that individual will receive that available location.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

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

INTERVIEW PANEL COMPOSITION

The 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.

[Statutory Authority: 74-18 [chapter 74.18 RCW]. WSR 95-01-066, § 67-35-070, filed 12/15/94, effective 1/15/95. Statutory Authority: Chapter 74.18 RCW. WSR 92-10-024, § 67-35-070, filed 4/29/92, effective 5/30/92; WSR 85-18-048 (Order 85-12), § 67-35-070, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-070, filed 4/16/84; WSR 84-01-043 (Order 83-09), § 67-35-070, filed 12/15/83. Formerly WAC 67-32-070.]

WAC 67-35-071 Operation of a vending facility in the absence of an assigned vendor. When a vendor resigns, leaves, or is removed from a facility, the department may appoint an operator for that facility on an emergency basis until the department is able to select a permanent vendor for that facility as outlined in WAC 67-35-060.

[Statutory Authority: Chapter 74.18 RCW. WSR 93-01-026, § 67-35-071, filed 12/7/92, effective 1/7/93.]

WAC 67-35-072 Vendor status—Loss of any vending facility to the VF program. 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. When a vendor loses the vending facility he/she will be required to indicate geographic availability and will be assigned the next available vending facility within the indicated geographic location. Any vendor who refuses the next available vending location will be required to submit an application for facilities as they become available.

[Statutory Authority: 74-18 [chapter 74.18 RCW], WSR 95-01-066, § 67-35-072, filed 12/15/94, effective 1/15/95. Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-072, filed 4/16/84.]

WAC 67-35-075 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 67-35-415, 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 67-35-090 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.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-075, filed 12/15/83. Formerly WAC 67-32-075.]

WAC 67-35-078 Nonprimary location vending facility—How awarded or assigned. When a notice of availability of a primary vending facility is bid per WAC 67-35-060 and 67-35-070, and there are no primary bids received, the department will accept bids for the same facility as a nonprimary vending facility. If there are no primary or nonprimary bids the department, in consultation with the blind vendors committee, will decide if the facility should remain in the business enterprise program.

[Statutory Authority: Chapter 74.18 RCW. WSR 93-01-026, § 67-35-078, filed 12/7/92, effective 1/7/93.]

WAC 67-35-082 Vendor selection review. A licensee or vendor who has applied for a vending facility under WAC 67-35-060 may upon request receive a review of the correctness of the selection process from the director of the department 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.

[Statutory Authority: Chapter 74.18 RCW. WSR 93-01-026, § 67-35-082, filed 12/7/92, effective 1/7/93. Statutory Authority: 1983 c 194 § 18. WSR 84-09-048 (Order 84-06), § 67-35-082, filed 4/16/84.]

WAC 67-35-090 Assignment to a vending facility—Agreement. To execute the assignment of a licensee or vendor to a vending facility, the licensee or vendor shall enter into an agreement with the department which states the terms and conditions of the assignment to the specific vending facility. The department will provide each vendor with a copy of these rules which include the description of the arrangements for providing services. The department will take adequate steps to assure that each vendor understands the provisions of any permit, contract or agreement under which he/she operates as evidenced by the vendor's signed state-

ment. No vendor will operate a vending facility unless he/she signs a vendor agreement. An existing agreement between the department and a vendor is automatically terminated when the vendor signs a new agreement with the department.

[Statutory Authority: Chapter 74.18 RCW. WSR 89-21-046, § 67-35-090, filed 10/13/89, effective 11/13/89. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-090, filed 12/15/83. Formerly WAC 67-32-090.]

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 34 C.F.R., section 361.42 (a)(13).

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-100, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-100, filed 12/15/83. Formerly WAC 67-32-100.]

WAC 67-35-110 Discrimination prohibited. The department, through its staff or any other agency, through any contract, permit or agreement is prohibited from discriminating against any licensee or vendor on the basis of race, color, sex, national origin, creed or religion, physical or mental impairment, age, marital status or political affiliation.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-110, filed 12/15/83. Formerly WAC 67-32-110.]

WAC 67-35-120 State committee of blind vendors—Election—Representation—Meetings. The committee of blind vendors consists of seven vendors elected by vendors representing three geographical areas of the state, Eastern Washington, Northwest Washington, and Southwest Washington. A minimum of one vendor will be elected from each geographical area and one committee vendor is elected at large by all vendors on a statewide basis.

(1) Members of the committee are elected for a two-year term and are elected during the month of January. Four of the committee members are elected during odd-numbered years and three committee members are elected during even-numbered years. Any vendor serving as a representative who chooses to transfer, ceases to be a vendor, or who promotes to a vending facility outside the area that he/she represents, thereby relinquishes membership in the vendors committee. The vendors in an area having lost such vendor committee representation shall elect a replacement vendor committee person for the remainder of that term. All vendors are entitled to vote in the election. The committee elects its own chair and vice chair.

(2) There will be a minimum of four blind vendor committee meetings per year. Additional meetings can be called by the manager of the business enterprise program or by the chair of the vendors committee.

(3) The department will conduct all elections and pay for all expenses in connection therewith and publish the results.

[Statutory Authority: Chapter 74.18 RCW. WSR 89-21-046, § 67-35-120, filed 10/13/89, effective 11/13/89. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-120, filed 12/15/83. Formerly WAC 67-32-120.]

WAC 67-35-130 Blind vendors committee—Purpose.

(1) The blind vendors committee shall:

(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;

(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;

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

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

(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.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-130, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-130, filed 12/15/83. Formerly WAC 67-32-130.]

WAC 67-35-140 Vending machine income disbursed by department. Vending machine income from vending machines on federal property which has been received by the department pursuant to 34 C.F.R., section 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 disburse 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 equip-

ment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-140, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-140, filed 12/15/83. Formerly WAC 67-32-140.]

WAC 67-35-150 Federal vending machine income—Use as determined. (1) Vending machine income received by the department as described in WAC 67-35-140(4) shall be known as federal vending machine income.

(2) Each year the blind vendors will vote to utilize the federal vending machine income for retirement or pension, health insurance, paid sick leave, or paid vacation.

(3) Any federal vending machine income not necessary for proposal described in subsection (2) of this section shall become set aside funds and will be used for the repair of vending facility equipment, the replacement of obsolete or worn-out vending facility equipment, the purchase of new or additional vending facility equipment in existing facilities, management services, and the costs necessary to the conduct of the state blind vendor's committee.

[Statutory Authority: RCW 74.28.200 - 74.28.230 [74.18.200 - 74.18.230]. WSR 86-08-010 (Order 86-2), § 67-35-150, filed 3/21/86. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-150, filed 12/15/83. Formerly WAC 67-32-150.]

WAC 67-35-160 Business enterprises revolving fund.

(1) There is established in the general fund of the state of Washington an account known as the business enterprises revolving fund (BERF).

(2) The net proceeds from any vending facility or any vending machines in public buildings dedicated to administrative functions, other than such an operation managed by or assigned to a vendor, shall be made payable to the business enterprises revolving fund.

(3) "Administrative functions" for purposes of this section shall mean the administrative offices of all state and local entities but does not mean any separately identified service operations performed by the public entity. For example:

(a) Net proceeds from machines located in administrative offices of the state, county and local governments are to be paid; but such income from machines located in places attended by the public for recreational purposes maintained by a municipality or governmental agency, a domed stadium, within jails, etc., is exempt.

(b) Net proceeds from machines located in administrative buildings located in colleges and universities are to be paid; but such income from machines located in dormitories, student activity centers, places where sporting events occur, etc., is exempt.

(c) Net proceeds from machines located in administrative offices of public utilities and port districts are to be paid; but such income from machines located in areas of airports, hospitals, etc., which the public regularly attends, is exempt.

(4) Net proceeds from machines located in state and federal safety roadside rest areas are to be paid.

(5) Net proceeds for purposes of this section shall mean the gross amount received less the cost of the operation including a fair minimum return to the vending machine company. As a minimum, the net proceeds received by the

department shall not be less than ten percent of the gross sales of the vending machine.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-19-048 (Order 85-13), § 67-35-160, filed 9/13/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-160, filed 12/15/83. Formerly WAC 67-32-160.]

WAC 67-35-170 Business enterprises revolving fund—Uses. All moneys in the business enterprises revolving fund shall be expended only for equipment, services and payment to vendors in the vending facility program.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-170, filed 12/15/83. Formerly WAC 67-32-170.]

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 34 C.F.R., 361.49; chapter 42.17 RCW and attendant regulations; and department policy B-21.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-180, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-180, filed 12/15/83. Formerly WAC 67-32-180.]

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.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-190, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-190, filed 12/15/83. Formerly WAC 67-32-190.]

WAC 67-35-200 Department responsibility—Architecture and construction. The department will select and provide architectural services and follow through on construction of the facility, within the guidelines prescribed by the state department of general administration, division of engineering and architecture, the state division of health and the local health department having jurisdiction.

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[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-200, filed 12/15/83. Formerly WAC 67-32-200.]

WAC 67-35-210 Department responsibility—Essential equipment and smallwares. The department will provide essential equipment and initial smallwares the department deems appropriate for the efficient operation of the vending facility. The right, title to, and interest in all initial equipment and smallwares will be vested in the department.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-210, filed 5/25/95, effective 6/25/95. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-210, filed 12/15/83. Formerly WAC 67-32-210.]

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.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-215, filed 5/25/95, effective 6/25/95.]

WAC 67-35-220 Department and vendor responsibility—Initial consumable stocks and cash. 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.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-220, filed 5/25/95, effective 6/25/95. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-220, filed 12/15/83. Formerly WAC 67-32-220.]

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 which has been deemed essential for the operation of the vending facility.

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(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.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-230, filed 5/25/95, effective 6/25/95; WSR 94-15-052, § 67-35-230, filed 7/15/94, effective 8/15/94. Statutory Authority: RCW 74.28.200 - 74.28.230 [74.18.200 - 74.18.230]. WSR 86-08-010 (Order 86-2), § 67-35-230, filed 3/21/86. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-230, filed 12/15/83. Formerly WAC 67-32-230.]

WAC 67-35-240 Department responsibility—Vendor-owned equipment. The vendor may purchase with the knowledge of the department vending facility equipment. The department shall retain a first option to repurchase such equipment if vendor places the equipment up for sale. In the event the vendor dies, or for any reason ceases to be a vendor, ownership of such equipment that is necessary for the operation of the facility shall become vested in the department for transfer to a successor vendor subject to an obligation on the part of the department to pay to the vendor, or the vendor's estate the fair value of the equipment. The vendor, the vendor's personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the necessity of the equipment or the amount to be paid by the department for the vendor's ownership in the equipment. When dissatisfied with any decision rendered as the result of such hearing, the vendor, the vendor's personal representative or next of kin, may file a complaint with the secretary under 45 C.F.R., section 1369.13 to request the convening of an ad hoc arbitration panel.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-240, filed 12/15/83. Formerly WAC 67-32-240.]

WAC 67-35-250 Department responsibility—Advance training. The department will provide vendors with an opportunity to obtain training and information so as to increase their skills and assist them in upward mobility. This training and information shall include training provided by the vending facility program; opportunity to engage in home study through the use of tape recorded instructions provided by the department; and at least one instructional meeting per year conducted by the blind vendors committee with the assistance of the department.

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[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-250, filed 12/15/83. Formerly WAC 67-32-250.]

WAC 67-35-260 Department responsibility—Opening for business. The department will assist the vendor upon request in procuring the necessary business licenses and permits; in selecting the necessary employees; and otherwise assist a vendor in opening a new facility for business.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-260, filed 12/15/83. Formerly WAC 67-32-260.]

WAC 67-35-270 Department responsibility—Consultation. The staff of the vending facility program is available to the vendor during regular office hours either in person or by telephone, to work with the vendor in resolving problems; and to develop procedures to secure a maximum net profit for the vendor; the maximum service to the patrons; and a feeling of cooperation between building management, the blind vendor and the department.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-270, filed 12/15/83. Formerly WAC 67-32-270.]

WAC 67-35-280 Department responsibility—Inspection—Required contacts. The vending facility program staff will make 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. The vending facility program staff upon adequate notice to the vendor shall inspect records and reports kept by the vendor.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-280, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-280, filed 12/15/83. Formerly WAC 67-32-280.]

WAC 67-35-290 Department responsibility—Contact with property management. The staff of the vending facility program will make regularly scheduled contacts with the property management person controlling the property where the vending facility is located to determine if terms of the permit or contract are being met and to process any other problems or requests which may exist.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-290, filed 12/15/83. Formerly WAC 67-32-290.]

WAC 67-35-300 Department responsibility—Negotiation with vending machine companies. The staff of the vending facility program may negotiate agreements with vending machine companies for the installation of vending machines in public buildings and determine where the net proceeds from each machine shall go.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-300, filed 12/15/83. Formerly WAC 67-32-300.]

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

\$1,000,000.00 each person personal injury,
 \$1,000,000.00 each occurrence personal injury, and
 \$1,000,000.00 each occurrence property damage; or
 insurance coverage specified in the permit or contract,
 whichever is greater. A vendor operating a vending

facility is required by the department to have this insurance and is required to provide proof of insurance to the department on an annual basis. Failure to have this insurance will result in suspension.

[Statutory Authority: Chapter 74.18 RCW. WSR 89-21-046, § 67-35-310, filed 10/13/89, effective 11/13/89; WSR 85-18-048 (Order 85-12), § 67-35-310, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-310, filed 12/15/83. Formerly WAC 67-32-310.]

WAC 67-35-320 Vendor responsibility—Independent—Not state employee. The vendor is an independent vendor in the vending facility program and in no way can be considered to be an employee of the department. The blind vendor receives all profits from the vending facility except as provided for in WAC 67-35-140(4).

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-320, filed 12/15/83. Formerly WAC 67-32-320.]

WAC 67-35-330 Vendor responsibility—Applicable federal and state laws, rules and regulations. The vendor will assume responsibility for securing and renewing all necessary business licenses and paying all fees required by and for the operation of the facility. It is the responsibility of the vendor to operate the facility in accordance with all federal and state laws, rules and regulations; including applicable health laws, rules and regulations.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-330, filed 12/15/83. Formerly WAC 67-32-330.]

WAC 67-35-340 Vendor responsibility—Vending facility management—Nondiscrimination. The vendor is responsible for maintaining a high level of customer service to assure the maintenance of the vending location and accommodate within reasonable limits other persons who may come to the facility. Determination of appropriate vending facility management activities will be in accordance with generally accepted practices in the food service industry and satisfaction of the building population and the building management. No customer or employee can be discriminated against by reason of race, color, sex, national origin, creed or religion, physical or mental impairment, age, marital status or political affiliation.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-340, filed 12/15/83. Formerly WAC 67-32-340.]

WAC 67-35-360 Vendor responsibility—Termination of agreement. 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.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-360, filed 5/25/95, effective 6/25/95. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-360, filed 12/15/83. Formerly WAC 67-32-360.]

WAC 67-35-370 Vendor responsibility—Cooperate. It is the responsibility of the vendor to cooperate with the

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duly authorized representative of the department in connection with their official responsibilities; to take no action derogatory to, or inconsistent with the paramount right, title and interest of the department of services for the blind to the vending facility, its equipment, or the contract or permit with the management of the property where the facility is located.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-370, filed 12/15/83. Formerly WAC 67-32-370.]

WAC 67-35-380 Vendor responsibility—Reports. It is the vendor's responsibility to submit such reports of the operation of the vending facility at such times, and in such formats, as the department may from time to time require. The reports may include, but not necessarily be limited to, the following items for the reporting period: Gross sales, beginning inventory, purchases, ending inventory, gross profit, personnel costs, other expenses, total expenses, net profit, percentage of profit, other income and total profit.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-380, filed 12/15/83. Formerly WAC 67-32-380.]

WAC 67-35-390 Vendor responsibility—Accounts payable. The vendor will be responsible for the payment of all goods and services, materials and merchandise, received from suppliers subsequent to the initial stock and supplies provided by the department. The vendor must assure each supplier that accounts are based on the vendor's credit record or reference.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-390, filed 12/15/83. Formerly WAC 67-32-390.]

WAC 67-35-400 Vendor responsibility—Employment of staff. The vendor is responsible for sufficient staff to assure the efficient operation of the facility and to provide adequate service to the customers. The vendor's relationship to his/her employed staff shall be the normal employer-employee relationship existing in private business enterprises.

(1) In the employment of a temporary relief vendor the vendor shall give preference to a licensee of the vending facility program.

(2) The vendor will maintain all records, make all payments, and make all reports required of an employer by federal, state and local statutes.

(3) The vendor will pay employees an agreed upon wage in accordance with applicable state and federal laws and/or contract provisions.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-400, filed 12/15/83. Formerly WAC 67-32-400.]

WAC 67-35-410 Vendor responsibility—Rebates. Rebates, commissions or bonuses received by the vendor from suppliers must be accounted for as income of the vending facility. Under no circumstances can such funds be treated as separate personal funds of the vendor.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-410, filed 12/15/83. Formerly WAC 67-32-410.]

WAC 67-35-415 Leave of absence for prolonged illness or physical incapacity. A vendor in the business enter-

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prises 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 department at the end of twelve months of [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.

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

(6) 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 department at the end of twelve months or sooner, and the vendor's license and/or agreement will be terminated:

(a) 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

(b) 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 department will assume responsibility for that vendor's location. The department 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 department 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.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-415, filed 12/15/83. Formerly WAC 67-32-415.]

WAC 67-35-420 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 department 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 department 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 department. 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 department 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.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-420, filed 12/15/83. Formerly WAC 67-32-420.]

WAC 67-35-425 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 department or by building management;

(3) When the vendor signs a new vendor agreement.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-425, filed 12/15/83. Formerly WAC 67-32-425.]

WAC 67-35-430 Reasons for suspension of 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 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.

[Statutory Authority: Chapter 74.18 RCW. WSR 95-12-007, § 67-35-430, filed 5/25/95, effective 6/25/95; WSR 89-21-046, § 67-35-430, filed 10/13/89, effective 11/13/89. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-430, filed 12/15/83. Formerly WAC 67-32-430.]

WAC 67-35-440 Suspension or termination of license—Other reasons. The license of a licensee or vendor may be suspended or terminated automatically for any of the following reasons:

- (1) Improvement of vision so that the licensee or vendor no longer meets the definition of blindness in WAC 67-35-030(2);
- (2) Withdrawal of the licensee or vendor from the program upon written notification to the department.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-440, filed 12/15/83. Formerly WAC 67-32-440.]

WAC 67-35-450 Termination of license—Disuse. If after two years the licensee has not participated in any of the vending facility programs as identified in this chapter, the department will terminate the license after a thirty-day notice and/or after affording the licensee an opportunity for a full evidentiary hearing.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-450, filed 12/15/83. Formerly WAC 67-32-450.]

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 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.

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-460, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-460, filed 12/15/83. Formerly WAC 67-32-460.]

(9/30/96)

WAC 67-35-470 Administrative review. All licensees and vendors will be advised of their right to an administrative review on any decision or action, or inaction, taken by the department regarding service provided the licensee or vendor under this chapter, or request for such service. The request for an administrative review must be filed within thirty days of the date of the decision, action or inaction, or lack of service being appealed.

The request for an administrative review may be made verbally or in writing and may be filed in any office of the department. A verbal request will promptly be reduced to writing by the department staff member receiving the request, and shall include the name and address of the licensee or vendor requesting the administrative review, the name and address of the representative (if any) of the licensee or vendor; the date of the request for administrative review; the date of the decision or action, or inaction, being appealed; as precisely as possible the issue to be resolved by the administrative review; and the signature of the licensee or vendor, or his/her representative.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-470, filed 12/15/83. Formerly WAC 67-32-470.]

WAC 67-35-480 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 department office or in a location selected by the department in the county in which the licensee or vendor resides. Upon request of the vendor or licensee, the department 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 department 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 department 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 67-35-150. 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.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-480, filed 12/15/83. Formerly WAC 67-32-480.]

WAC 67-35-490 Full evidentiary hearing. A licensee or vendor who desires a full evidentiary hearing will request

such hearing within thirty days after receiving notice from the department of the findings and decision of the administrative review, or within thirty days of the department's failure to hold a fair hearing, or to render a decision in a fair hearing. The request for a full evidentiary hearing may be made verbally or in writing, and may be filed in any office of the department. If made verbally such request will promptly be reduced to writing as specified in WAC 67-35-470. A full evidentiary hearing shall be provided by the director of the Washington department of services for the blind, or his/her designee; and will be held within thirty days after the submission of the request. The full evidentiary hearing will be held in a location as specified in WAC 67-35-480.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-490, filed 12/15/83. Formerly WAC 67-32-490.]

WAC 67-35-500 Full evidentiary hearing—Right to information. Upon the filing of a request for a full evidentiary hearing the licensee or vendor shall be informed of all information in the case file and shall have the right of access to, and may examine any file or record owned by the department regarding his/her case which may contain information relevant and material to his/her grievance; except for documents and information disclosure of which is prohibited by federal or state law, and/or rules and regulations. This right of access to and examination of information shall be extended to the licensee's or vendor's representative, attorney and/or the blind vendors committee when functioning as an advocate for the licensee or vendor if so authorized in writing by the licensee or vendor or his/her legal guardian.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-500, filed 12/15/83. Formerly WAC 67-32-500.]

WAC 67-35-510 Full evidentiary hearing—Transcript. A transcript of the testimony of the full evidentiary hearing will be made by the department, and a copy of this transcript shall be made available to the aggrieved party upon request.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-510, filed 12/15/83. Formerly WAC 67-32-510.]

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 Education the convening of an ad hoc arbitration panel as provided for in 34 C.F.R., section 395.13 and section 395.6(e).

[Statutory Authority: Chapter 74.18 RCW. WSR 85-18-048 (Order 85-12), § 67-35-520, filed 8/30/85. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-520, filed 12/15/83. Formerly WAC 67-32-520.]

WAC 67-35-525 Hearing officer—Certain purposes. For the purpose of the provisions of WAC 67-35-490, 67-35-520 and 67-35-070(7), the director will contract with a hearing officer who will be an attorney licensed to practice in the state of Washington or will contract with another state agency for the services of a hearing officer(s) who will be

equally qualified. Within funds available, the hearing officer may be paid as a management service as set forth in WAC 67-35-150 when hearing the appeals of vendors and licensees.

[Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-525, filed 12/15/83. Formerly WAC 67-32-525.]

WAC 67-35-910 Facility operation agreement. Upon selection of a vendor to operate a business enterprise program facility, the department of services for the blind and the chosen vendor shall enter into a facility operation agreement. The text of this agreement is located in departmental policy and addresses the mutually agreed responsibilities of the vendor/operator and of the department. This agreement includes, but is not limited to, terms and conditions of facility operation such as vendor rent and insurance responsibilities, hours of operation, and conditions of termination of the agreement. Other terms or conditions of operation which are particular to a given facility shall be included as an addendum and shall be incorporated into the facility operation agreement.

[Statutory Authority: Chapter 74.18 RCW. WSR 96-11-096, § 67-35-910, filed 5/16/96, effective 6/16/96; WSR 95-01-066, § 67-35-910, filed 12/15/94, effective 1/15/95. Statutory Authority: Chapter 74.18 RCW. WSR 89-21-046, § 67-35-910, filed 10/13/89, effective 11/13/89. Statutory Authority: 1983 c 194 § 18. WSR 84-01-043 (Order 83-09), § 67-35-910, filed 12/15/83. Formerly WAC 67-32-910.]