

1 Department of Jobs and Training

2

3 Adopted Permanent Rules Relating to Vending Stands and Business

4 Enterprises of Services for the Blind

5

6 Rules as Adopted

7 3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

8 Pursuant to Minnesota Statutes, section 248.07, subdivision
 9 14a, this chapter is issued by the commissioner of jobs and
 10 training to govern all vending stands and business enterprises
 11 established by the Services for the Blind, Department of Jobs
 12 and Training, for which the department is responsible. Licenses
 13 to blind persons will be issued according to this chapter and
 14 applicable statutes by the commissioner or a designee,
 15 hereinafter to be known as the licensing agency. A licensed
 16 blind person is an independent contractor to the licensing
 17 agency and is not an employee of the licensing agency or the
 18 state of Minnesota.

19 3321.0300 PERIOD OF LICENSE.

20 Each license will be issued upon execution of an operator's
 21 first agreement pursuant to part 3321.0500, subpart 1, for an
 22 indefinite period but subject to termination by written notice
 23 for good cause shown, including but not limited to:

24 A. failure to operate according to parts 3321.0100 to
 25 3321.1400, the agreement with the operator, or the terms and
 26 conditions of the licensing agency's permit to operate in the
 27 building or property;

28 B. improvement of vision so that the operator no
 29 longer meets the definition of blindness under part 3321.0200;

30 C. extended illness with medically documented
 31 diagnosis of prolonged incapacity of the operator to operate the
 32 vending stand in a manner consistent with the needs of the
 33 location or other available locations in the program;

34 D. withdrawal of the operator from the program upon
 35 the operator's written notification to the licensing agency; and

1 E. failure to work as a licensed operator, relief
2 operator, or take additional approved training related to the
3 operation of an enterprise, a minimum of two weeks per year
4 unless on an approved leave.

5 A license may be issued to a blind person to operate an
6 enterprise, other than a vending machine enterprise, in the
7 program without that person taking vending machine training. No
8 licensee may be placed or transferred to a vending machine
9 enterprise without first taking and satisfactorily completing
10 vending machine training sufficient to operate the vending stand
11 or business enterprise in question.

12 3321.0350 DETERMINATION OF VISUAL STATUS.

13 Subpart 1. **Testing; evidence of visual acuity.** In order
14 to equitably determine ongoing compliance with visual
15 requirements for operators under parts 3321.0200 and 3321.0300,
16 item B, in years ending in zero and five all licensed vendors
17 must provide current ophthalmological or optometric evidence
18 documenting their visual status. "Current" means evidence of an
19 examination no more than six months old from the date of
20 submission. Evidence is sufficient if it allows the state
21 ophthalmological consultant to determine whether or not the
22 operator is legally blind. If the ophthalmological consultant
23 determines the operator to be legally blind and specifically
24 states that the blindness is permanent, the operator will not be
25 subject to future examinations under this part.

26 Subp. 2. **License termination; failure to prove visual**
27 **acuity.** Operators not providing ophthalmological or optometric
28 evidence are presumed to be not legally blind and action must be
29 taken under part 3321.0300 to terminate their license.

30 Operators found to be not legally blind on the basis of the
31 submitted evidence shall have their licenses terminated under
32 part 3321.0300. Their termination date is one year from the
33 date of their notice of license termination. The operator must
34 immediately be referred to the vocational rehabilitation unit of
35 Services for the Blind and Visually Handicapped to be evaluated

1 for eligibility for services that would lead to alternative
2 vocational opportunities.

3 Subp. 3. **Cost of examination.** An operator may enter as an
4 expense on their books submitted to the licensing agency the
5 cost of obtaining ophthalmological or optometric evidence
6 required by this chapter.

7 3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.

8 The licensing agency is responsible:

9 A. for furnishing each vending stand or business
10 enterprise with adequate, suitable equipment, and replacement of
11 such equipment and assistance in maintenance and repair of
12 equipment; and

13 B. for furnishing each vending stand or business
14 enterprise with adequate initial stocks of merchandise and
15 supplies. Subsequent purchase of merchandise shall be made by
16 the operator out of current receipts. Merchandise shall be
17 replaced as sold, maintaining the inventory at the minimum of
18 the original inventory unless mutually agreed otherwise by the
19 licensing agency and the operator.

20 3321.0700 RIGHT TO, TITLE TO, AND INTEREST IN THE VENDING STAND
21 EQUIPMENT AND STOCKS.

22 Subpart 1. **Inventories.** The right to, title to, and
23 interest in the vending stand equipment used in the program is
24 vested in the state of Minnesota. Operators will be required to
25 acquire ownership of merchandise and supplies through
26 reimbursing the licensing agency for such expenditures, by
27 monthly payments extended over a three-year period. Upon
28 approval of the licensing agency additional time may be granted
29 in hardship cases, the purpose of which is to assure that no
30 individual be denied the opportunity to become an operator
31 because of the operator's inability to purchase the initial
32 stock. Upon termination of the operator's license or when
33 operators withdraw from a specific vending stand or business
34 enterprise location, the licensing agency will purchase for the
35 new operator, at cost, salable merchandise and, at an amortized

1 price, supplies remaining in the stand, assuming there is no
2 amount owing in the departing operator's accounts with the
3 licensing agency. No fixtures or equipment shall be added,
4 altered, or removed from the stand except at the direction of
5 the licensing agency. The operator will exercise all possible
6 care in the use of fixtures and equipment, making no
7 alterations, changes, or additions. When a licensed operator
8 under contract dies, the licensing agency must immediately take
9 an inventory at the stand in cooperation with a member of the
10 operator's family or a representative of the operator's estate.
11 The licensing agency must then prepare a summary accounting of
12 the deceased licensed operator's accounts with the licensing
13 agency. If the balance is in favor of the licensing agency, the
14 estate must pay that balance. If the balance is in favor of the
15 deceased licensed operator, the licensing agency must pay the
16 balance to the estate. The warrant will be made payable to the
17 "Estate of [licensed operator's name]."

18 Subp. 2. **Operator determination of acquisition.** Beginning
19 12 months following the effective date of this subpart, an
20 operator who begins to operate at a vending stand or business
21 enterprise location shall determine what merchandise or supplies
22 the new operator shall purchase from the departing operator. In
23 the case of an operator disagreement over the purchase of
24 supplies or merchandise, the departing operator may request that
25 the licensing agency intervene and make a final decision. The
26 departing operator shall be responsible for disposing of the
27 merchandise or supply inventory not purchased by the new
28 operator.

29 3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

30 [For text of subps 1 to 3, see M.R.]

31 Subp. 4. **Due date.** Funds set aside from vending stand
32 proceeds are due by the 25th of the following month.

33 3321.1000 POLICIES GOVERNING DUTIES, SUPERVISION, TRANSFER, AND
34 PARTICIPATION OF OPERATORS.

35 [For text of subpart 1, see M.R.]

1 Subp. 2. **Operator duties.** Each operator shall agree to:

2 A. perform faithfully and to the best of the
3 operator's ability the necessary duties in connection with the
4 operation of a vending stand according to the licensing agency's
5 rules, the terms of the licensing agency's permit to operate in
6 the building or property, and the agreement with the operator;

7 [For text of item B, see M.R.]

8 C. operate the vending stand according to all
9 applicable health laws and regulations and any other applicable
10 federal, state, or local law or regulation;

11 D. furnish monthly reports to the licensing agency by
12 the tenth of the following month, listing daily sales by type,
13 other income, purchases, other expenditures, and personal
14 withdrawals, and attaching all statements and invoices properly
15 receipted. Inventory of merchandise will be included when
16 requested;

17 E. indemnify and hold harmless the state of
18 Minnesota, its officers, or agents, for any acts or omissions of
19 said operator that may result in the operator's liability to
20 third parties, and the state shall not be liable for negligence
21 based on any theory of liability; and

22 F. provide the licensing agency at least 60 days
23 notice of intent to leave the program.

24 Subp. 3. **Agency duties.** The licensing agency assumes
25 responsibility for providing to the vending stand operators such
26 supervision, assistance, and training as may be necessary to
27 ensure the operation of each vending stand in the most
28 productive and efficient manner possible. This supervision,
29 assistance, and training must be performed according to the
30 following policies in addition to other provisions of parts
31 3321.0100 to 3321.1400.

32 A. In entering agreements for new or vacated stands,
33 preference on the basis of seniority of experience of operating
34 stands under the control of the licensing agency shall be given
35 to capable operators who are deemed competent to handle the
36 enterprise under consideration. The application of such

1 preference will not prohibit the licensing agency from selecting
2 an operator from the community in which the stand is located.
3 No operator may transfer to another stand and bid back into the
4 stand the operator just left in the same bidding sequence. An
5 operator is in default if either of the following is more than
6 30 days late:

- 7 (1) reports under subpart 2, item D; or
- 8 (2) payment in full under part 3321.0800.

9 In case of any default, the operator will be assessed a
10 late fee of \$20. The licensing agency shall notify the operator
11 of the default and penalty. An operator who is in default twice
12 within six months will not be permitted to transfer to new or
13 vacated stands, after notice of disqualification from the
14 licensing agency. The operator may regain eligibility to
15 transfer if the operator has cured any prior default and has not
16 been in default for six consecutive months after the prior
17 defaults have been cured. Seniority shall be determined on the
18 basis of continuous service in the stand program with the
19 licensing agency. A leave of absence for medical reasons,
20 supported by a doctors statement, may be granted by the
21 licensing agency and operator management committee and the
22 operator shall continue to accrue seniority during the leave. A
23 medical leave of absence for up to three months, which may be
24 later extended for an additional three months, may be granted
25 under a plan in which the requesting operator retains
26 responsibility for and general management of the current vending
27 stand. A medical leave up to one year may also be granted under
28 a plan in which the operator permanently gives up all
29 responsibility for and rights to the current vending stand. A
30 doctor's statement of ability to return to work is required
31 before an operator's actual return to a stand.

32 A general leave of absence may be granted by the licensing
33 agency and operator management committee for a period up to two
34 years during which time the operator shall not accrue seniority
35 but may exercise seniority rights for new or vacated stands.
36 The operator shall retain seniority accrued up to the date of

1 the leave. An operator on general leave shall give up all
2 rights to the vending stand or business enterprise which they
3 are operating.

4 B. When it has been determined that a relief operator
5 or an assistant or assistants must be employed, the operator
6 shall first make attempts to locate a handicapped individual
7 before approving the employment of a nonhandicapped person. The
8 wages paid for any help, including bookkeeping, must be in
9 reasonable proportion to work performed and must be approved by
10 the licensing agency.

11 C. The licensing agency shall approve the items and
12 the selling prices at which those items may be sold, which
13 comprise the merchandise inventory at each vending stand.

14 D. The operator will acquire liability and if
15 necessary workers' compensation insurance for the vending
16 stand. The agency will purchase liability insurance for a
17 vending stand only when, in the opinion of the licensing agency,
18 it is deemed essential that the agency purchase this insurance.

19 E. The licensing agency shall review all operator
20 books and other information with specific attention to expenses
21 and take those steps necessary to ensure operator payment of
22 those expenses.

23 3321.1100 OPERATOR MANAGEMENT COMMITTEE.

24 [For text of subpart 1, see M.R.]

25 Subp. 2. **Representation, nominations, and terms.** The
26 committee will consist of one representative from each of the
27 program districts (at present six) and two representatives at
28 large.

29 [For text of items A to C, see M.R.]

30 D. The committee shall elect its own chair and other
31 officers. The chair shall appoint subcommittees as necessary.

32 E. The full committee will meet a minimum of four
33 times a year. Meetings may be called by notice of either the
34 licensing agency or the chair of the committee. Subcommittees
35 will meet as necessary to carry on their functions.

1 [For text of item F, see M.R.]

2 [For text of subp 3, see M.R.]

3 3321.1200 REVIEW OF AGENCY DECISIONS.

4 [For text of subps 1 and 2, see M.R.]

5 Subp. 3. **Hearing procedures.** An opportunity for a fair
6 hearing conducted pursuant to Minnesota Statutes, chapter 14
7 will be afforded to each operator dissatisfied with any action
8 arising from the operation or administration of the vending
9 stand program. The following procedures will be followed in
10 granting operators a fair hearing.

11 [For text of item A, see M.R.]

12 B. An operator or the operator's designee must
13 request a fair hearing in writing. This request must be
14 transmitted to the director of the licensing agency personally
15 or by certified mail, return receipt requested. The request
16 must specify the action being appealed and state in detail the
17 basis for the appeal.

18 C. The hearing shall be held at a time and place
19 convenient and accessible to the operator requesting a fair
20 hearing. A hearing held during regular agency working hours and
21 located at the state agency central office will be deemed among
22 the convenient times and places. Upon receipt of the request,
23 the licensing agency shall immediately request a hearing date
24 from the state Office of Administrative Hearings, whose designee
25 shall serve as an impartial presiding officer, and then notify
26 the operator of the time and place for the hearing. The
27 operator must be provided sufficient preparation time before the
28 hearing. The operator shall be provided a copy of the hearing
29 procedures and rules.

30 D. The operator has the right to be represented by
31 counsel, and may present witnesses and cross-examine adverse
32 witnesses.

33 E. A transcript of the proceeding must be available
34 to the operator.

35 F. After receipt of the report of the administrative

1 law judge the director shall issue a written decision within 15
2 days.

3 Subp. 4. Arbitration panel. If an operator is
4 dissatisfied with the decision rendered after a full evidentiary
5 hearing, the operator may request that an arbitration panel be
6 convened by filing a complaint with the secretary of the
7 Department of Education, as authorized by federal regulations at
8 Code of Federal Regulations, title 34, section 395.13 (1981).

9 3321.1300 ACCESS TO PROGRAM AND FINANCIAL INFORMATION.

10 Each operator shall be provided access to all program and
11 financial data of the licensing agency relevant to the operation
12 of the vending stand program, including quarterly and annual
13 financial reports. Insofar as is practicable, the data shall be
14 made available in braille or recorded tape. At the request of
15 an operator, the licensing agency will arrange a convenient time
16 to assist in the interpretation of the data. The operator
17 management committee organized under part 3321.1100 shall be
18 provided all individual and program data necessary to carry out
19 its purpose and function.