

CHAPTER 3321
DEPARTMENT OF JOBS AND TRAINING
SERVICES FOR THE BLIND

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VENDING STANDS AND BUSINESS ENTERPRISES OF SERVICES FOR THE BLIND

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to Minnesota Statutes, section 248.07, subdivision 11, the following rules are hereby issued by the commissioner of jobs and training to govern all vending stands and business enterprises established by the Services for the Blind, Department of Jobs and Training, for which the department is responsible. Licenses to blind persons will be issued in accordance with these rules and applicable statutes by the commissioner or his designee, hereinafter to be known as the licensing agency.

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12*

3321.0200 SELECTION OF STAND OPERATORS.

The selection of stand operators will be made on an objective basis, including a thorough evaluation of the following: experience, training, former vocations, education, and other factors that relate to job requirements. Preference will be given to blind persons who are in need of employment. The following specific requirements will also be adhered to. Blind persons selected as operators will:

A. be determined, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, to have:

(1) not more than 20/200 central visual acuity in the better eye with correcting lenses; or

(2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its evident diameter subtends an angle of no greater than 20 degrees;

B. be citizens of the United States; and

C. be certified as qualified for the operation of a vending stand by the rehabilitation staff of the Services for the Blind, Department of Jobs and Training.

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12*

3321.0300 PERIOD OF LICENSE.

Each license will be issued for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

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

B. improvement of vision so that the operator no longer meets the definition of blindness as stated in item A;

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

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

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0400 TERMINATION OF LICENSE.

The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose license is proposed to be revoked. This notification shall state the grounds for such action and shall inform the operator of the right to appeal the action. The operator will be afforded an opportunity for a fair hearing before termination of the license as described in part 3321.1200.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0500 OPERATOR AGREEMENTS.

Subpart 1. Requirement. Each licensed operator will sign an agreement for the operation of an assigned vending stand, and will sign a new agreement each time the operator moves or transfers to another vending stand.

Subp. 2. Revocation or suspension of agreement. The operator's agreement to operate a vending stand may be revoked or temporarily suspended in those instances where the operation, integrity, or reputation of the program may be damaged. The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose agreement is suspended or revoked. The notification shall state the grounds for such action and shall inform the operator of the right to appeal the action, as described in part 3321.1200. The action to suspend or revoke an agreement does not automatically mean the termination of the operator's license. Notice of intent to terminate the operator's license shall require a separate notice, as described in part 3321.0400.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.

The licensing agency is responsible:

A. for furnishing each vending stand or business enterprise with adequate, suitable equipment and maintenance, repair, and replacement of such equipment; and

B. for furnishing each vending stand or business enterprise with adequate initial stocks of merchandise and supplies. Subsequent purchase of merchandise shall be made by the operator out of current receipts. Merchandise shall be replaced as sold, maintaining the inventory at the minimum of the original inventory.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

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

The right to, title to, and interest in the vending stand equipment used in the program is vested in the state of Minnesota. Operators will be required to acquire ownership of merchandise and supplies through reimbursing the licensing agency for such expenditures, by monthly payments extended over a three-year period. Upon approval of the licensing agency additional time may be granted in hardship cases, the purpose of which is to assure that no individual be denied the opportunity to become an operator because of the operator's inability to purchase the initial stock. Upon termination of the operator's license, the licensing agency will purchase, at the prevailing wholesale price, all salable merchandise and, at an amortized price, all supplies remaining in the stand, assuming there is no delinquency in the operator's accounts with the licensing agency. No fixtures or equipment shall be added, altered, or removed from the stand except at the direction of the licensing agency. The operator will exercise all possible care in the use of fixtures and equipment, making no alterations, changes, or additions.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0800 FUNDS SET ASIDE FROM VENDING STAND PROCEEDS.

Subpart 1. Amounts. The licensing agency will set aside or cause to be set aside from the monthly net proceeds of the operation of vending stands the following amounts:

- A. on the first \$100 or portion thereof, 2 percent;
- B. on the second \$100 or portion thereof, 4 percent;
- C. on the third \$100 or portion thereof, 6 percent;
- D. on the fourth \$100 or portion thereof, 8 percent;
- E. on the fifth \$100 or portion thereof, 10 percent;
- F. on the sixth \$100 or portion thereof, 12 percent;
- G. on the seventh \$100 or portion thereof, 14 percent; and
- H. any amounts over \$700, 16 percent.

"Net proceeds," as used herein, means the monthly cash receipts including any vending machine or other income, less merchandise purchases, general expenses, and payroll, (excluding set-aside charges).

Subp. 2. Other conditions of funds. This rate supersedes any previous rate heretofore established by any agreements or policies of the licensing agency. The operator shall pay these set-aside funds monthly to the licensing agency. These set-aside funds shall be used only to the extent necessary and may be used for the sole purpose of:

- A. maintenance and replacement of equipment;
- B. the purchase of new equipment; and
- C. the management services that are specified in state law.

Subp. 3. Set-aside schedule. The operator management committee, as defined in part 3321.1100, subpart 3, will participate with the licensing agency in the establishment of a set-aside schedule covering each of the purposes for which the set-aside funds are intended to be used, and will be reviewed annually to determine the need for change based upon the previous year's expenditures. The schedule shall be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required, with the allowances for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis. Changes, when necessary, shall be by amendment to parts 3321.0100 to 3321.1400.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0900 DISTRIBUTION AND USE OF INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

Subpart 1. **Income accrual to operator.** Vending machine income from vending machines on federal property which has been disbursed to the licensing agency by a property managing department, agency, or instrumentality of the United States shall accrue to each blind operator operating a vending stand on such federal property in an amount not to exceed the average net income of the total number of blind operators within the state program, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind operator in any amount exceeding the average net income of the total number of blind operators in the United States.

Subp. 2. **Minimum income.** No blind operator shall receive less vending machine income than the operator was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

Subp. 3. **Combination of machines to make a stand.** No limitation shall be imposed on income from vending machines combined to create a vending stand when such stand is maintained, serviced, or operated by a blind operator. The licensing agency will retain vending machine income disbursed by a property managing department, agency, or instrumentality of the United States in excess of the amounts eligible to accrue to blind operators.

Subp. 4. **Quarterly disbursement.** The licensing agency will disburse vending machine income to blind operators on at least a quarterly basis.

Subp. 5. **Use of income retained by agency.** Vending machine income retained by the licensing agency will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been furnished information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; or management services. Any set-aside charged to blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

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

Subpart 1. **Net proceeds.** Each operator shall be entitled to the net proceeds of the operation of the vending stand he/she operates, less the amount set aside by the licensing agency.

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

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

B. cooperate with official and duly authorized representatives of the licensing agency in connection with their official program responsibilities;

C. operate the vending stand in accordance with all applicable health laws and regulations;

D. make all purchases of merchandise on a strictly cash basis unless exception is permitted in writing by the licensing agency;

E. make no credit sales; and

F. furnish monthly reports to the licensing agency by the tenth of the following month, listing daily sales, other income, purchases, other expenditures, and personal withdrawals, and attaching all invoices properly received. Inventory of merchandise will be included when requested.

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

A. In entering agreements for new or vacated stands, preference on the basis of seniority of experience of operating stands under the control of the licensing agency shall be given to capable operators who are deemed competent to handle the enterprise under consideration. The application of such preference will not prohibit the licensing agency from selecting an operator from the community in which the stand is located. Seniority shall be determined on the basis of continuous service in the stand program while under contract with the licensing agency. In the case of broken service, previous service shall be considered only when termination was due to no fault of the operator. Termination for medical reasons may be considered as a leave of absence when so requested by the operator and approved by the licensing agency at the time of termination.

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

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

D. The operator must obtain the approval of the licensing agency before changing vendors with whom the operator does business in connection with the vending stand.

E. The operator will purchase liability insurance for the vending stand. The agency will purchase liability insurance for a vending stand only when, in the opinion of the licensing agency, it is deemed essential that the agency purchase this insurance.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

Subpart 1. Annual election for representatives. The licensing agency and the elections subcommittee of the operator management committee will conduct an annual election for representatives to the operator management committee.

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

A. Nominations will be solicited in each district for that district and statewide for at-large representatives.

B. Elections will be by licensed operators in each district for their district and statewide for at-large representatives.

C. Each term will be two years, with a limit of two successive terms.

D. The committee shall elect its own chairman and other officers. The chairman shall appoint subcommittees as necessary.

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E. The full committee will meet a minimum of twice a year. Meetings may be called by notice of either the licensing agency or the chairman of the committee. Subcommittees will meet as necessary to carry on their functions.

F. The committee shall establish bylaws for the further rules, functioning, and guidance of the committee.

Subp. 3. **Purpose and function of committee.** The operator management committee's purpose and function is to:

A. participate with the licensing agency in major administrative decisions and policy and program development;

B. receive grievances of vending stand operators and serve as their advocates;

C. participate with the licensing agency in the administration of the transfer and promotion system for vending stand operators;

D. participate with the licensing agency in developing training and retraining programs; and

E. sponsor, with the assistance of the licensing agency, meetings and instructional conferences for vending stand operators.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1200 REVIEW OF AGENCY DECISIONS.

Subpart 1. **Written notice.** Operators shall be informed in writing at the time they are licensed of their right to and the procedures to be followed in obtaining an administrative review or a fair hearing regarding an agency decision.

Subp. 2. **Informal review procedures.** An opportunity for an informal administrative review will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators an informal administrative review:

A. An operator or the operator's designee (who need not be an attorney) may request in writing, within 15 working days of the occurrence of the action, administrative review of the licensing agency action. This review will be made only by a member or members of the administrative staff of the agency who have not in any way participated in the agency action in question.

B. The administrative review will be held during regular agency working hours, at a district or local office location. An administrative review will be conducted within 30 working days of receipt by the licensing agency of such a written request.

C. Documentation as to written requests for administrative review and actions and decisions resulting therefrom shall be maintained as part of the official record of the administrative review process.

D. When an informal administrative review does not resolve a dispute to the satisfaction of a blind operator, the blind operator may request that the licensing agency provide a fair hearing.

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

A. If an operator requests a fair hearing, such a request must be made either within 15 working days after an adverse decision based on an administrative review or, in the absence of an administrative review, within 15 working days of the occurrence of the action with which the operator is dissatisfied.

B. An operator or the operator's designee must request a fair hearing in

writing. This request must be transmitted to the administrator of the licensing agency personally or by certified mail, return receipt requested. The request must specify the action being appealed and state in detail the basis for the appeal.

C. The hearing shall be held at a time and place convenient and accessible to the operator requesting a fair hearing. A hearing held during regular agency working hours and located at the state agency central office will be deemed among the convenient times and places. Upon receipt of the request, the licensing agency shall immediately request a hearing date from the state Office of Administrative Hearings, and then notify the operator of the time and place for the hearing. The operator shall be provided a copy of the hearing procedures and rules.

D. After receipt of the report of the administrative law judge the state administrator (or, in the case of license revocation, the commissioner of jobs and training) shall issue a proposed decision. The proposed decision shall state that the decision shall become final 15 days after its issuance unless, before that date, the operator requests a review by a three-person appeal committee according to Minnesota Statutes, section 248.07, subdivision 15, clause (3). The appeal committee's recommendation will be made to the administrator of the licensing agency or the commissioner who shall issue a final decision modifying or affirming the proposed decision.

Subp. 4. **Arbitration panel.** If an operator is dissatisfied with the decision rendered after a full evidentiary hearing, the operator may request that an arbitration panel be convened by filing a complaint with the secretary of the Department of Education, as authorized by federal regulations at Code of Federal Regulations, title 45, section 1369.13 (1979).

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 640 s 32; L 1984 c 654 art 5 s 58; ISp1985 c 14 art 9 s 12*

3321.1300 ACCESS TO PROGRAM AND FINANCIAL INFORMATION.

Each operator shall be provided access to all program and financial data of the licensing agency relevant to the operation of the vending stand program, including quarterly and annual financial reports. Insofar as is practicable, such data shall be made available in braille or recorded tape. At the request of an operator, the licensing agency will arrange a convenient time to assist in the interpretation of such data.

Statutory Authority: *MS s 248.07 subd 7*

History: *ISp1985 c 14 art 9 s 12*

3321.1400 EXPLANATION TO OPERATOR OF OPERATOR'S RESPONSIBILITIES AND PRIVILEGES.

The licensing agency rules, the agreement with the operator, and any applicable regulations of the authority having charge of the property on which the vending stand or business enterprise is located shall be read and explained to each operator. A copy of the agreement and these parts will be furnished to each operator. The agreement between the licensing agency and the operator, consistent with the provisions of these parts and signed by the operator, will be the operator's attestation that the agreement and these parts have been read to the operator and that the operator agrees to abide by them.

Statutory Authority: *MS s 248.07 subd 7*

History: *ISp1985 c 14 art 9 s 12*