

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

2085 SSA SB 778

Gallop Polls have found that Americans fear blindness most, next to cancer. Fear of blindness is equated with fear of darkness and the unknown. This social attitude penetrates our language as well as our psychology, translating into a lack of social acceptance and lack of jobs for the blind. This explains why only 30,000 blind people, nationwide, have jobs which pay them enough to be free from Social Security support. But the 30,000 who do have jobs must be contrasted with the nearly one-half million blind people who do not. The problem is not that the blind cannot work; it is lack of opportunity based on misconception and fear.

(2) Unless a special priority is extended, blind people do not have a fair chance to benefit from assistance provided to the handicapped as a class. Partly this is due to the minority status of the blind, since there are only one-half million blind people as compared to the total handicapped population of over 36 million, nationwide. Partly, too, the programs to help the handicapped, as a class, have tended to push the blind aside because of the belief that blindness is among the most severe disabilities. Many consider it hopeless to concentrate their efforts on rehabilitating the blind, choosing instead others who are perceived to be more capable of productive work.

(3) The limited priority for the blind to operate vending facilities in public buildings should be ensured by legislation in Alaska because of the severe restrictions on suitable property where viable businesses can be established in our state. Under these circumstances, allowing vending facilities to be operated by the blind and the severely handicapped, simply means that the program has less impact, and the resources will be spread more thinly. Under present practice, vending facilities in Alaska are only assigned to blind persons. As such, the program has visibility in the state. Because of this, Alaska is better able to assist the blind to overcome the historic image of the unproductive and incompetent blind.

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

DIVISION OF VOCATIONAL REHABILITATION

JAY S. HAMMOND, GOVERNOR

Central Office  
Pouch F, M.S. 0581  
State Office Building  
Juneau, Alaska 99811  
(907) 586-6500

February 22, 1982

Senator Victor Fischer  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99801

Dear Senator;

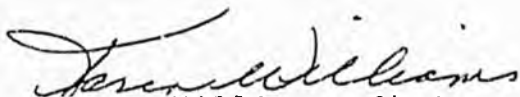
The Vocational Rehabilitation Advisory Board in its meeting of February 17 and 18, 1982 reviewed with dismay Senate Bill 778. The majority of us feel that it violates the intent of current statutes by overtly establishing a vehicle for discrimination between members of the disabled community.

By restricting and confining the operation of vending facilities on public property to blind persons this bill inhibits the vending facility program in a number of ways. Two which come to mind are:

1. Disabled persons other than blind will be denied the opportunity to participate in a viable employment venture.
2. Historically there have not been, nor currently are there available the necessary blind resources willing or qualified to fill the existing or forecast vending positions.

We therefore respectfully request that you reconsider your sponsorship of this bill in light of the interpretation that we, the members of the Vocational Rehabilitation Advisory Board, have presented you.

Sincerely,



Karen Williams, Chairman  
Division of Vocational Rehabilitation Advisory Board

# MEMORANDUM

State of Alaska

TO: Senator Vic Fischer  
Pouch V, M.S. 3100  
Juneau, Alaska 99811

DATE: March 1, 1982

FILE NO:

TELEPHONE NO:

586-6500

FROM: Theda Mason-Smith  
Division of Vocational Rehabilitation  
Department of Education  
Pouch F, M.S. #0581  
Juneau, Alaska 99811

SUBJECT:

SB 778, "An act relating to the operation of vending facilities on public property by blind persons."

Per the request of your Administrative Assistant, the Division would like to see AS 23.15.100(b), remain as it is currently in effect, a law which allows the operation of vending facilities by blind and severely handicapped persons on state property. This law allows the program to remain open to both blind and severely handicapped people. We feel that any revision of the law is unnecessary at the present time. Thank you for your interest in the handicapped.

cc: Senator Pat Rodey  
Senator Brad Bradley

TMS:lk

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

### DIVISION OF VOCATIONAL REHABILITATION

JAY S. HAMMOND, GOVERNOR

Central Office  
Pouch F, M.S. 0581  
State Office Building  
Juneau, Alaska 99811  
(907) 586-6500

February 22, 1982

Senator Victor Fischer  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99801

Dear Senator;

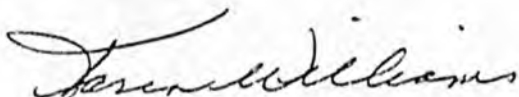
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Sincerely,



Karen Williams, Chairman  
Division of Vocational Rehabilitation Advisory Board

Dennis DeWitt  
3-3-82

SB 778 - Re: operating of vending facilities on public property by blind persons.

Page 3, lines 10-14 in definition of public property

Dennis suspects this would include hospital cafeterias & gift shops -

Most hospital gift shops run by auxiliaries, which put money back into hospital - clips "volunteer booths"

Suggest leave language as was "Building owned by the state" etc or exempt health facilities

City & Borough of Juneau owns part of Bartlett

~~Alaska~~ Municipality - owned hospitals

Ketchikan, Pet. Wrang., Sitka, Bartlett,  
Valdez, Cordova, Seward, Sol, Homer,  
Kodiak

THEDA Smith  
586-6500

BLIND

Vending facilities SB 778

↳ Voc. Rehab.

Bring to Senators

- Bill not really needed
- now can place severely handicapped  
they train people
- bill was proposed so only  
pertain to blind people  
AK Federation of the Blind
- vending stands operated  
by the people



# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

3/26/82

REVISED

### SENATE STATE AFFAIRS COMMITTEE SCHEDULE

#### TUESDAY

March 30

1:30 pm

- SB 653 Public Employees/Strike Prohibition
- SB 777 Professional Staff Loan Program
- SB 778 Vending facilities operated by the blind
- SB 799 ~~Alaska Senior Citizens Employment Team~~ (in HESS)
- SB 846 Architectural barrier regulations
- SCR 47 Property rights/divorced persons
- SJR 83 Release of Vitaly Shevchenko

#### THURSDAY

April 1

1:30 pm

- SB 689 Capital projects/Maintenance and Operating Fund
- SB 791 Expansion of teleconference network
- SB 833 License for purchase of alcoholic beverages
- SB 621 Incentive to hire older Alaskans

### TENTATIVE SCHEDULE

#### TUESDAY

April 6

1:30 pm

- SJR 72 World War II artifacts
- SB 704 Alaska Servicemen's Memorial--Veterans Lake
- SB 705 Appropriation for SB 704
- SB 706 Appropriation for caretaker facility
- SB 707 Renaming Byers Lake as Veterans Lake
- SB 740 World War II artifacts

#### THURSDAY

April 8

1:30 pm

- SB 13 G. O. Bonds/Defeasance
- SB 296 G. O. Bonds/Defeasance
- SB 297 G. O. Bonds/Defeasance

#### THURSDAY

April 15

VIDEO TELECONFERENCE, 3:00 pm, BUTROVICH ROOM  
INTERIM REPORT, NEW CAPITAL SITE PLANNING COMMISSION  
(Joint meeting with House State Affairs Committee)

UNLESS OTHERWISE NOTED, COMMITTEE MEETINGS WILL BE HELD IN THE SENATE STATE AFFAIRS COMMITTEE ROOM, 423 CAPITOL. THANK YOU.

SSA 3/30/82  
Hearing

SB 778

Don Luty  
in favor of SSSB 778  
Blind vendors

- 1) gives priority to the blind
- 2) blind vendor's committee intact
  - gives active involvement
  - conformance w/ fed law

3)

Wanda Issel -  
Blind Vendor

- much needed to bring into conformity w/ Fed law
- productive independent, tax-paying citizens

Dennis De Witt -  
amend ok

Michael Horgan  
Bd. of Education  
→ Dir Div of Voc. Rehab  
Citizens advisory Bd.

exclusionary in some cases  
unnecessary

don't need to apologize

one of the best programs in US

main criticism = too much \$  
too paternalistic

- priority for blind
- never placed anyone but legally blind
- division must have flexibility to hire
- had to hire 2 from outside
- expense in setting up \$40,000 - \$60,000

- ① - tries to estab. admin reg by statute
- ② effect of being exclusionary

restrictive to one group

Regs.

Last Feb.

doesn't

- wanted all blind vendors under

Randolph Sheppard

- lots of Fed. Regs. - no money  
into state to run program

Commission of Educ.

gives vendors x-tra step

Commi - is an advisory committee  
can't make Regs.

Committee of Vendors Operators  
Sept 1974

Vic - outrage at Regs.

Mike - severely handicapped  
has a definition

- Vic —
- 1) Program principally for blind
  - 2) heavily door open to severely handicapped
  - 3) Sec. 5 - legal difficulties

persons w/  
disabilities

# MEMORANDUM

# State of Alaska

TO: Nancy Grossman  
Sen. Fischer's office

DATE: 3/31/82

FILE NO:

TELEPHONE NO:

FROM: Theda Mason-Smith *TMS*  
Division of Vocational Rehabilitation

SUBJECT: Business Enterprise Program

Here are the vendor proposed regulations (I can't seem to locate quickly the copy I told you about which juxtaposed them with the Division's regs). Also attached is a copy of an analysis of the program done by our Chief of Planning and Research, and last year's report of income to the federal government.

Income figures for federal fiscal year 1981 are as follows:

Sitka Public Health hospital	\$6,828.66	(Marthews)
Anchorage Court Building	23,351.86	(Lutz since July 81)
Anchorage Fed. Bldg. dry stand	10,484.35	(Shortridge)
Anchorage Post Office Mall	9,246.55	(Reed since Dec. 81)
Juneau State Office Building	52,292.20	(Provo)

The gift shop operated by Wanda Issel in the Anchorage Federal Building was opened in December 1981. Mrs. Issel has not submitted reports and I don't know what her income is; however, she was provided an initial stock and supplies in an amount somewhat over \$20,000.

In addition, each vendor received an annual leave payment of \$1308 or more if their earnings were over that amount. Vending machine income also accumulated to the vendor in the federal building in Anchorage \$5,964, and to the Juneau vendor, \$6,037.

Vendors also have Blue Cross insurance for themselves and family if they choose (not all want it) and an IRA account of \$1500 for calendar year 81. It will be \$2,000 for 82.

If you have more questions, please feel free to ask.

4-13

"active participation" means a <sup>of negotiations</sup> process through which

the Committee of ~~Blind Vendors~~ is provided the opportunity

to substantively ~~finalize~~ <sup>develop</sup> program policies,

standards, and procedures affecting the operation

of vending facilities ~~by blind licensed vendors~~,

with the Commissioner of education having final

administrative responsibility.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT

This is to certify that the Committee of Blind Vendors, represented by a subcommittee on rules, and Alaska DVR, represented by the facility's specialist have met and agreed upon all of the provisions contained in Attachment A, "Proposed Amendments to Alaska DVR's Revised Vending Facility Program Rules" and Attachment B, "Agreement for Operation of a Vending Facility Under Randolph-Sheppard Act." The parties believe that these provisions, which have been negotiated in good faith and after full and active participation, represent a workable plan for future conduct of the Randolph-Sheppard program on federal, state, and private property within the State of Alaska. Accordingly, the undersigned representatives recommend promulgation of the revised rules and operating agreement as set forth in Attachments A and B.

For the Committee of Blind Vendors, Subcommittee on Rules:

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Donald Lutz, Chairman

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Date

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Vocational Rehabilitation,  
Business Enterprises Program  
Theda Mason-Smith, Facilities  
Specialist

5

Proposed Amendments to Alaska Rules and Regulations Governing Implementation of the Vending Facility Program for the Blind on Federal and Other Property

The State Committee of Blind Vendors (hereinafter referred to as the "Committee") is proposing amendments to the rules and regulations which the State of Alaska has promulgated for the purpose of implementing the federal Randolph-Sheppard Act and Alaska Statutes, relating to the operation of vending facilities by blind persons on federal property and in public buildings within the State of Alaska. This Committee derives its statutory authority and responsibilities from a section of the federal Randolph-Sheppard Act, 20 U.S.C. 107b-1, and a section of the Federal regulations which implement that Act, 34 CFR 395.14. Under the statute the state licensing agency -- the Alaska Division of Vocational Rehabilitation (hereinafter referred to as the "SLA" or "Alaska DVR") -- is required to insure that this Committee's responsibilities include "(A) participation, with the agency, in major administrative decisions and policy and program development, (B) receiving grievances of blind licensees and serving as advocates for such licensees, (C) participation, with the state agency, in the development and administration of a transfer and promotion system for blind licensees, (D) participation, with the state agency, in developing training and retraining programs, and (E) sponsorship, with the assistance of the state agency, of meetings and instructional conferences for blind licensees."

The Alaska Committee of Blind Vendors takes these statutory responsibilities seriously and is therefore committed to participate with Alaska DVR in all of the aforementioned areas. With respect to the task at hand -- that is, developing rules and regulations which may be approved federally, as part of Alaska's "Application for Designation as State Licensing Agency" -- the Committee believes that participation can best occur if the Committee and the agency each prepare rules and amendments for consideration and negotiation by both parties. In this connection, it is noted that the SLA has recently developed a document which constitutes a rewritten version of Alaska DVR's vending facility program rules.

The Committee concurs with some of the policy decisions reached by the SLA in proposing this latest revision of the vending facility program rules, but there are substantial policy differences which must be negotiated by the Committee and the SLA in order to reach concurrence on a set of regulations which can be submitted for federal approval and promulgation within the state. In addition, in the context of reviewing the rules and regulations, the Committee believes it is appropriate to consider revisions to the standard agreement which each blind vendor and the SLA must sign prior to commencing operation of a vending facility. Accordingly, the Committee's proposals for amending the vending facility program rules and revising the operator's agreement are set forth herein as Attachments A and B, respectively.

It should be noted that the Alaska Administrative Code (4 AAC Chapter 54) currently contains rules and regulations which Alaska DVR has already promulgated for the vending facility program. Nonetheless, as indicated earlier, a complete revision to these rules, in the nature of an entirely rewritten version, is now pending approval within the state. Since the Committee of Blind Vendors has the responsibility for participating in the development and approval of these rules, the comments and recommendations contained in Attachment A are offered in relationship to DVR's revised rules, included herein as Attachment C. The Committee believes that the attached proposals merit serious consideration and good faith negotiation on the part of the State of Alaska. For its part, the Committee is fully prepared to participate in this process as it is required to do under federal law.

Respectfully submitted,

*Donald E. Lutz*

Donald Lutz, Chairman  
Alaska Committee of Blind Vendors

## Committee of Blind Vendors

## Proposed Amendments to Alaska DVR's Revised Vending Facility Program Rules

4 AAC 54.110. "PURPOSE OF REGULATIONS." The Committee does not concur with DVR's proposed policy statement, primarily because there is an attempt being made to establish two vending facility programs under one set of regulations. As a practical matter, only one vending facility program (the Randolph-Sheppard Program) exists in Alaska, yet these rules are being proposed to initiate a dual program -- one on federal property and one on state property. In the view of the Committee, this is an unworkable and confusing approach, not to mention its lack of legal validity.

The Randolph-Sheppard Program is conducted throughout the United States on federal and other property, including state and private property. Both the federal Act and the regulations issued by the United States Department of Education require that state licensing agencies "cooperate" with the Commissioner of the Rehabilitation Services Administration in "applying the requirements of the Act in a uniform manner." In this connection, it is noted that DVR's proposed rules would create two systems under which licensed blind vendors would be treated differently from one another, depending on the particular location of their vending facilities.

To alleviate this possibility and to conform Alaska's vending facility program to the federal requirements, the Committee is proposing that these rules relate only to DVR's implementation of the Randolph-Sheppard Program on federal, state, and private property in Alaska. Accordingly, the Committee has revised the purpose clause of 4 AAC 54.110 as follows:

4 AAC 54.110. PURPOSE OF REGULATIONS. The Division of Vocational Rehabilitation will use 4 AAC 54.110 -- 4 AAC 54.185 to administer the Randolph-Sheppard Vending Facility Program pursuant to 20 U.S.C. 107 et. seq. (the federal Randolph-Sheppard Act), 34 CFR Part 395 (Federal regulations promulgated by the United States Department of Education to implement this Act), and AS 23.15.120 (the Alaska statute authorizing cooperation with the federal government in order to afford the citizens of the state the benefits of federal programs).

4 AAC 54.115. "TRAINING OF VENDING FACILITY MANAGERS." The Committee does not concur with DVR's proposed provisions for this section. It is especially noted that the eligibility requirements for vending facility manager trainees are overly extensive, having the potential of excluding many persons who might

well benefit from training but not meet the rigorous requirements for the program prior to entry into it. As one example, it is required that a potential trainee "have transportation available to and from a prospective work place," yet, in another provision, DVR reserves to itself the right "to determine the periods of time and the locations for training necessary to prepare the individual to operate as the manager of a vending facility." Thus, it is apparent that a prospective trainee must have transportation available to any site which DVR, in the exercise of its discretion, shall select. The Committee objects to this and other eligibility conditions for the training program, and proposes that AAC 54.115 be amended to read as follows:

TRANS IS THE  
FORM WORKSHEET  
DVR  
MAY BE COVER  
IN THE  
LITTLE C  
TRAINING

4 AAC 54.115 TRAINING OF VENDING FACILITY MANAGERS. In accordance with 34 CFR Section 395.11, the Division shall conduct an ongoing training program for vending facility managers as follows:

(a) The Division and the Committee of Blind Vendors shall develop training and retraining programs for all persons in the field of vending facility management and operation.

Handwritten note with a slash and some illegible text.

(b) The Division shall insure that effective programs of vocational and other training services shall be provided to blind persons as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516) and the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(1) The training program shall be open to all blind persons who indicate a general capacity to operate a vending facility and who wish to undertake specific training.

(2) The training program shall include (A) Personal and vocational adjustment; (B) Books, tools, and other training materials; (C) Customer relations; (D) Business mathematics; (E) Merchandising; (F) Inventory control; (G) Financial reporting, taxation, and accounting procedures for small businesses; (H) Housekeeping and sanitation procedures; (I) Food preparation and sanitation; (J) Safety; (K) Vending machine operation; (L) State agency regulations and procedures; and (ii) Classroom instruction and on the job training in all aspects of vending facility management.

(3) Upward mobility training, including further education and additional training or retraining for improved work opportunities shall also be available to blind vending facility managers.

(4) The Division may contract with other agencies or organizations within or outside of the State of Alaska to fulfill its responsibilities under this section.

(c) The Division and the Committee of Blind Vendors shall develop and maintain written standards to be met by each trainee for satisfactory completion of the vending facility training program, and upon meeting such standards, the Division shall certify the trainee as qualified to operate a vending facility.

*Div. will accept input*

(d) Whenever necessary, the Division shall provide post employment services to blind vending facility managers to assure that the maximum vocational potential is achieved for each blind vendor.

4 AAC 54.120. "CERTIFICATION OF TRAINED VENDING FACILITY MANAGERS."

The Committee believes that the provision concerning standards and certification contained in its proposal for subsection (c) of 4 AAC 54.115 is a more appropriate method for addressing the matter of certification, in as much as certifying the qualifications of vendor trainees is naturally the final step of the training program. Moreover, the Committee believes that there is no reason to elaborate on the certification process more than has been proposed in subsection (c). For these reasons, the Committee proposes to delete DVR's proposed 4 AAC 54.120 on Certification of Trained Vending Facility Managers, substituting in lieu thereof provisions concerning licensing.

*Certify only needs indic has met criteria + successfully completed training.*

4 AAC 54.125. "LICENSING OF CERTIFIED VENDING FACILITY MANAGERS."

The Committee does not concur with the licensing provisions which DVR has proposed to adopt. The most basic difference is with DVR's position that a license to operate a vending facility is issued only with respect to a particular facility. The Committee believes that this is not the concept of "licensing" as the Randolph-Sheppard Act and Federal regulations conceive it. Moreover, DVR's proposal is not in conformance with the standard licensing practices adopted by most of the state agencies elsewhere in this country. In this connection, the Committee submits that upon meeting the basic qualifications for becoming an operator of a vending facility, a blind vendor should be issued a license which certifies that he or she is qualified and eligible for placement as the manager of a vending facility. Beyond this, federal guidelines call for an operator's agreement (sometimes referred to as a "licensing agreement") which sets forth in detail the specific duties and responsibilities of the state

*No. Each fac is diff & requires diff skills. Licensing for a small stand is not given to...*

licensing agency and each vending facility manager. The Committee also feels that DVR's proposal for licensing rules inappropriately includes provisions related to assignment of managers, which in the Committee's view, are best handled in a separate section of the regulations. Accordingly, the Committee proposes to separate the licensing provisions from those which are more exclusively related to the assignment of licensed managers. With this in mind, Sections 4 AAC 54.120 and 4 AAC 54.125 should be set forth in the state rules as follows:

4 AAC 54.120. LICENSING. (a) Issuance: The Division shall issue licenses to blind persons who are in need of employment and who are determined to be (1) legally blind as defined in 34 CFR Section 395.1(c); (2) Citizens of the United States; (3) At least 18 years of age; and (4) Certified by the Division as qualified to manage a vending facility.

(b) Regardless of the type of property (federal, state, or private) upon which a vending facility operated by a licensed blind person is located, the Division shall consider all blind licensees to be participants in the Randolph-Sheppard Program administered by the Division pursuant to 20 U.S.C. 107 et. seq., 34 CFR Part 395, and these rules.

(c) Licensing agreement: There shall be a licensing agreement, developed jointly by the Division and the Committee of Blind Vendors and subject to joint approval by the Committee and the Division, covering the obligations of the Division and each blind vendor in setting forth such other terms and conditions as mutually agreed upon by the Division and the Committee. This licensing agreement is to be used each time a manager is assigned to a facility and shall be dated and signed on the first date of business in any facility. A complete inventory of all equipment, initial stocks, and initial petty cash provided by the Division will be furnished to the manager as a part of the licensing agreement.

(d) Termination of license: (1) The Division shall issue licenses for an indefinite period but subject to suspension or termination if, after affording the manager an opportunity for a full evidentiary hearing, pursuant to 4 AAC 54.170, the Division establishes that the vending facility to which the manager is assigned is not being operated in accordance with these rules and regulations, the terms and conditions of the permit, or the terms and conditions of the licensing agreement.

NO!

have in force  
an agreement  
used by other  
States -

No license shall be terminated until a finding that such termination is justified has been made as a result of a full evidentiary hearing. Until such a finding is made and communicated to the manager; he/she shall remain a duly licensed facility manager, with all rights and privileges deriving therefrom.

*No! May give license to hear & note of right to full hearing*

(2) Additionally, the Division may suspend or terminate a manager's license for (A) Improvement of vision so that the manager no longer meets the definition of blindness as defined in 34 CFR Section 395.1(c); (B) Prolonged incapacity of the vending facility manager (exceeding three months) with a documented medical diagnosis. This period shall be extended by the Division in accordance with 4 AAC 54.130(d)(2); and (C) Withdrawal of the manager upon his written notification.

4 AAC 54.125. ASSIGNMENT OF MANAGERS. In establishing vending facilities and assigning managers on federal, state, and private property, the Division shall give priority to blind persons licensed in accordance with 4 AAC 54.120. (a) Ready for employment list: The Division shall maintain a "ready for employment list," including the names and dates of licensing of each manager awaiting assignment to a vending facility.

(b) Bid procedures: (1) The Division shall send written announcements of new or vacated vending facilities to all established managers and persons on the "ready for employment list." Announcements shall include (1) the location of the facility;(2) a description of space available including floor plan, fixtures, and equipment to be provided; (3) type of operation including merchandise to be sold and vending machine proceeds,if any,which accrue to the manager; (4) projected gross income of a new facility or, if an established facility, a report of actual gross income for the preceding 12 months; (5) Other information as the Committee and the Division may agree in advance to be necessary in the circumstances. Announcements shall remain open for twenty-one (21) days, after which the assignment will be made in accordance with paragraph (2) of this subsection.

(2) Upon the closing of announcements in accordance with paragraph (1) of this subsection the Division shall provide to the Committee of Blind Vendors a complete list of managers and individuals from the "ready for employment list" who have submitted bids, whereupon the Committee

shall certify in writing to the Division the seniority ranking of all bidders for the vending facility. The Division shall make the bid award in accordance with the seniority ranking of the bidders as certified in writing by the Committee unless a manager would otherwise be awarded the bid on the basis of seniority has been placed on probation prior to announcement of the opening by the Division. In the event that the bidding manager with the highest seniority ranking does not qualify for the bid award pursuant to the preceding sentence, the bidder who is next in line shall be offered the vending facility. (3) Each announcement for a vending facility opening shall be sent by certified mail, return receipt requested.

(c) Promotions: (1) Promotion of managers, including persons to be selected from the "ready for employment list," shall be based on seniority, and all licensees, except managers on probation, shall be eligible to compete for promotional opportunities. (2) Upon promulgation of these regulations, the Division shall turn over to the Committee an accurate seniority list, and the Committee shall thereafter keep and maintain the seniority list and shall certify in writing to the agency the seniority rank of those licensees who submit requests for assignment each time a vending facility is open. The Committee shall develop procedures for keeping and maintaining the seniority list and shall be accountable to the Division and the licensees for keeping and maintaining an accurate and up-to-date list. In the event that the Division does not concur with the seniority list as kept and maintained by the Committee, deviations shall be reconciled on the basis of all available records through joint negotiations among the Division, the licensee in question, and the Committee.

(d) Transfers: (1) A manager may be transferred if (A) the vending facility is closed through no fault of the manager; (B) there is, through no fault of the manager, a loss of 25% or more in business potential as compared to that stated in the announcement of the opening of the vending facility, and a survey by the Division substantiates that the losses will be sustained over a prolonged period of time; (C) The Committee and the Division determine that there is reasonable evidence of an irreconcilable conflict between the manager and property managing officials, and the

manager requests a transfer; and (D) it is jointly determined by the agency and the Committee, upon receipt of complaints from property managing officials, that the vending facility is not being operated in accordance with the terms of the permit or contract for the establishment and operation of the vending facility. (2) Transfers are to be considered lateral in as much as possible; (3) The Division and the Committee of Blind Vendors shall determine when a manager meets the conditions for transfer contained in paragraph (1) of this subsection, and any manager who is eligible for transfer shall be entitled to priority assignment to any vending facility which becomes open, without regard to the requirements of subsections (b) and (c) of this section.

(e) Demotions: (1) The Division may demote an established manager within six (6) months after promotion to a vending facility if, after affording the manager an opportunity for a full evidentiary hearing, it is determined that the manager is not capable of operating the business successfully. If demoted in accordance with the preceding sentence, the manager must, wherever possible, be assigned to a vending facility of a type which he or she has demonstrated a capability to operate.

(2) If at any time it is mutually agreed among the managers, the Committee and Division that the manager shall not continue in his location, he shall be entitled at his option to withdraw from the facility without penalty and to reassignment to a smaller facility which he has demonstrated the capability to operate as soon as one becomes available.

(f) Probationary period: (1) Persons who have completed training, been licensed, and placed as managers, shall serve an initial six (6) month probationary period, during which time they will not be eligible for promotion. (2) Established managers may be placed on probation for disciplinary purposes only and shall not lose seniority while on probation. (3) An established manager may be placed on disciplinary probation when the Division determines that the vending facility is not being operated in accordance with the law, these rules and regulations, the terms of the permit for the establishment and operation of the vending facility, or the terms of the licensing agreement between the Division and the manager. Notice of disciplinary probation shall

be sent to the manager by certified mail, return receipt requested, and the effective date of the probationary period shall be the date upon which the notice was received by the manager as indicated on the signed receipt. The notice of disciplinary probation shall contain the reasons for the probation, steps to be taken to be removed from probation, and a statement of the manager's right to appeal the probation in accordance with 4 AAC 54.170. The probationary period will be for sixty (60) days. If, at the end of the sixty (60) day probationary period, the manager has failed to correct satisfactorily the defects for which he/she was placed on probation, the Division may give the manager thirty (30) days written notice of intent to terminate the manager's license in accordance with the procedures set forth at 4 AAC 54.120(c).

4 AAC 54.130. "RESPONSIBILITIES OF VENDING FACILITY OPERATORS."

The Committee concurs with DVR's proposal for subsection (b) of this section but is in disagreement with subsections (a), (c), and (d). In subsection (a) DVR proposes language which can best be summarized by a more general requirement for each manager to operate the vending facility in accordance with sound business practices. In addition, in subsections (c) and (d) DVR seeks to assume responsibility for operating each vending facility when the regular manager is absent for vacation, illness, etc. The Committee does not concur with this approach and prefers a policy which provides each manager with the responsibilities normally assumed by the operator of any similar small business. Accordingly, the Committee submits the following proposals which establish the manager's responsibilities for operating the vending facility.

4 AAC 54.130(a) The responsibilities of a vending facility operator include:

(1) operating the facility in accordance with applicable laws and regulations relating to public health, taxes, compensation of employees, Worker's Compensation, insurance and civil rights; and

(2) observing the generally accepted practices for sound and satisfactory management of a small business enterprise.

(c) Vacations: (1) Annual vacation time may be taken as determined by each vending facility manager in reasonable amounts which conform to accepted business practices. In accordance with policies developed and agreed upon by the Division and the Committee, managers shall be entitled to compensation for fifteen (15) days of vacation time during

any calendar year, with the rate of daily compensation for vacation time to be fixed annually by the Division and the Committee of Blind Vendors. Compensation for vacation time shall be paid to the manager from small business enterprises revolving fund within 14 days of the Division's receipt of a claim from the manager for vacation compensation. <sup>There shall be no more than one claim per year, to be paid at a time which shall be determined by the manager.</sup> ~~at manager's determination.~~ (2) When planning to take

vacations, a vending facility manager shall select a substitute manager, preferably a qualified blind person, to assume responsibility for the operation of the vending facility. Such substitute shall be compensated by the manager. While the Division will assist by suggesting any known candidates, the selection of the substitute is the manager's responsibility.

(3) The manager shall notify the Division of the selection of a substitute in advance of taking any vacation. Leave or absence of a short term nature shall be used with discretion by the manager. Advanced notice to the Division shall be given if at all possible.

(d) Illness of the manager: (1) When it is necessary for the manager to be absent from the facility due to illness or other physical disability, it shall be his/her responsibility to provide coverage of the facility during such absence, including extended absence in accordance with paragraph (2) of this subsection and for payment of the substitute manager. (2) When the licensed manager finds it necessary to be absent from the facility more than thirty (30) successive days during a calendar year, he/she shall apply to the Division for a leave of absence for such extended period, giving reasons for absence, proof of need for continued absence, and such other information as the Division may require. It shall be the policy of the Division to grant up to one year of such extended leave, in thirty (30) day extensions, where individual circumstances warrant, and proper medical documentation is provided by the manager. While on leave the manager shall continue to be the manager of record assigned to the vending facility and shall have all of the rights afforded to all other managers in the program.

4 AAC 54.135. "REVOCATION OF LICENSES." The Committee does not concur with DVR's proposed section concerning the revocation of licenses, substituting in lieu thereof the provision authorizing termination of licenses suggested by the Committee for inclusion at 4 AAC 54.120(c). In the judgement of the Committee, this provision incorporates all of the reasons for revocation included in DVR's proposal.

4 AAC 54.140. "ESTABLISHMENT OF VENDING FACILITY LOCATIONS." The Committee concurs with the DVR's proposals for this section but suggests one additional subsection (b) designed to delineate responsibilities of the Division and the Committee in the establishment of vending facilities. The Committee's proposal is as follows:

✓ 4 AAC 54.145. PROVISION OF EQUIPMENT, FIXTURES, AND INITIAL STOCK.

(b) Decisions regarding the opening or closing of vending facilities and the number of facilities to be installed on a given site shall be made by the Division in accordance with policies which are developed jointly and agreed upon by the Division and the Committee of Blind Vendors. A representative designated by the Committee shall have the right to participate with representatives of the Division in negotiating the terms and conditions of all permits or contracts for the establishment and operation of vending facilities and in evaluating all potential sites for vending facilities under consideration by the Division.

4 AAC 54.145. "PROVISION OF EQUIPMENT, FIXTURES, AND INITIAL STOCK."

The Committee has no serious objection to approving DVR's proposals for the rules related to equipment, fixtures, and stock. The Committee is proposing, however, an alternative approach to that suggested by DVR in order to provide each manager the option of vendor ownership. This option is permitted under 34 CFR Section 395.6; hence the Committee proposes to incorporate it in 4 AAC 54.145 as follows:

4 AAC 54.145. PROVISION OF EQUIPMENT, FIXTURES, AND INITIAL STOCK.

(a) The Division shall provide architectural services, equipment, fixtures, initial supplies and inventory and initial operating funds necessary for the establishment and operation of each vending facility.

All rights, title to, and interest in the equipment, fixtures, initial inventory, and initial operating funds shall be vested in only the following: (A) The Division, or (B) the vending facility manager.

(b) In the event that ownership is vested in the Division, the following rules shall apply: (1) No alteration, change, or removal of equipment shall be made without prior approval of the Division. (2) The manager shall report immediately any incident, theft, or defacement of equipment.

(3) The manager shall maintain an inventory of stock equal to and/or exceeding the wholesale value of the initial stock furnished by the Division, or shall have equal cash available.

(c) In the event that ownership is vested in the manager, the following rules shall apply: (1) If a manager desires to purchase and maintain

title to vending facility equipment and stocks of merchandise, the Division will enter into a written agreement with such owner-manager, delineating conditions of ownership. The terms and conditions of such agreement shall be developed jointly by the Division and the Committee of Blind Vendors and subject to approval by the Division and the Committee. (2) No person will be denied the opportunity to become manager because of unwillingness or inability to purchase vending facility equipment or initial stock. (3) If the manager desires to purchase his/her own equipment and retain title thereto, the manager will be responsible for repair and maintenance of such equipment to assure that the facility will be kept operational and in an attractive condition. Failure to do so will result in action on the part of the Division as described in 4 AAC 54.150(a)(2). The Division will retain first option to purchase equipment owned by a manager when such manager dies or for any other reason ceases to be a licensee or transfers to another vending facility, the Division shall negotiate with the manager-owner or his representative for the purchase or repurchase of equipment owned by the manager-owner. In the event the manager-owner, his representative, or next of kin is dissatisfied with the results of negotiations with the Division for the purchase or repurchase of equipment, he/she shall be entitled to a full evidentiary hearing and arbitration as provided in 34 CFR Section 395.13.

4 AAC 54.150. "REPAIR AND REPLACEMENT OF EQUIPMENT AND FIXTURES." The Committee does not concur with DVR's proposed rules concerning repair and replacement of equipment and fixtures. As an alternative, the Committee chooses to amend these provisions by adopting a policy which distinguishes between repair of equipment which is owned by a owner-manager and that which is owned by the Division. Fundamentally, the Committee believes that each party (the owner-manager or the Division) has the responsibility for maintaining and replacing equipment owned by it. The Committee's proposals are as follows:

4 AAC 54.150 MAINTENANCE, REPAIR, AND REPLACEMENT OF EQUIPMENT.

(a) The Division shall maintain supervision over the maintenance and repair of equipment and shall insure that such equipment is maintained in good repair, and in an attractive condition, to assure the continued successful operation of each vending facility.

(1) Where ownership of equipment is vested in the Division, the Division shall maintain, or cause to be maintained, in good repair all vending

facility equipment in an attractive condition and shall replace, or cause to be replaced worn out or obsolete equipment, as required to assure the continued successful operation of the facility. Where used equipment is furnished to replace nonfunctioning, worn out, or obsolete equipment, the Division shall insure that such equipment is in good working order and shall make any necessary repairs prior to installing such equipment at the vending facility.

(2) Where ownership of the equipment is vested in the manager, the Division will not be responsible for repair, maintenance, or replacement of equipment, after such equipment is initially furnished to the vending facility.

Owner-managers will bear this responsibility in their respective facilities. The Division, however, reserves the right to repair, maintain, or replace, or cause to be repaired, maintained, or replaced, any equipment in need of repair, maintenance, or replacement; in order to keep the facility operable and in an attractive condition, if after reasonable notice, the owner-manager fails to do so. The owner-manager will be assessed the amount required to repair, maintain, or replace equipment when the Division has undertaken this responsibility.

(b) Repair and maintenance services for vending facility equipment owned by the Division will be provided as an expense to the vending facility program and shall be performed only by approved service dealers who shall be designated in advance for each manager by the Division and authorized to provide reasonable and necessary repair and maintenance services expeditiously upon the request of the manager or the Division. When maintenance or repair services are required, the manager may arrange for such services directly with an approved service dealer and shall notify the Division as soon as possible. The manager shall take reasonable care of all vending facility equipment and shall carry out routine day to day cleaning and maintenance procedures. The manager shall assure that equipment is maintained in accordance with all health laws and regulations.

4 AAC 54.155. "TERMINATION OF BUSINESS." The Committee does not concur with the termination provision as proposed by DVR, although the Committee agrees that the issue should be addressed. As alternative language, the Committee prefers the following:

4 AAC 54.155. TERMINATION OF BUSINESS. (a) Whenever a vending facility manager terminates business in the vending facility to which he/she is assigned, the Division and the manager, or the manager's representative, heirs, or assignees, shall jointly conduct an inventory of all equipment, stocks of merchandise, and operating funds on hand.

(b) Upon termination of business by the manager, the Division shall have the first option to buy saleable merchandise at the fair market value. If the Division exercises this option, any money in excess of the amount initially supplied to the vending facility manager will be paid to the manager or to the manager's heirs or assignees.

4 AAC 54.160. "DISTRIBUTION AND USE OF VENDING MACHINE INCOME." The Committee does not concur with DVR's proposal for rules in this area. The major problem is that DVR is attempting, again, to maintain two programs under one set of rules. The Committee submits that this is particularly confusing with respect to the provisions concerning distribution and use of vending machine income. Moreover, the Committee submits that blind vendors, regardless of their location on federal, state, or private property are, in so far as possible, to be treated in a uniform manner, as required under 34 CFR Section 395.3(a)(11). With this in mind, the Committee proposes that 4 AAC 54.160 "distribution and use of vending machine income," should be incorporated in the regulations as set forth below:

4 AAC 54.160. DISTRIBUTION AND USE OF VENDING MACHINE INCOME.

(a) Distribution of income: (1) Vending machine income from vending machines on federal, state, or private property, which has been disbursed to the Division shall be distributed to any blind licensee operating a vending facility on such property.

(2) The Division shall disburse vending machine income to blind vending facility managers on at least a quarterly basis.

(3) No managers shall receive vending machine income in an amount which exceeds the average net income of the total number of blind vendors within the state, except that, whenever the state average income for blind vendors exceeds the national average income for all blind vendors in the United States, no manager may receive vending machine income in an amount exceeding such national average.

(4) No blind vending facility manager shall receive less vending income than he/she was receiving prior to January 1, 1974, as a direct result of any limitation imposed on such income pursuant to paragraph (3)

(5) No limitation shall be imposed upon income from vending machines which are maintained, serviced, or operated by a blind vending facility manager.

(b) Use of excess vending machine income: (1) Vending machine income from vending machines on federal, state, and private property, in excess of the amount distributed to blind vending facility managers in accordance with subsection (a) of this section, shall be used, as determined by the Committee and the Division and to the extent of funds available, to fulfill the following purposes in the order in which they are listed (A) provision of paid sick leave and vacation time, health insurance contributions, or the establishment of retirement or pension plans, as determined by a majority vote of blind vending facility managers, provided that the Division shall first furnish to each such manager information on all matters relevant to these proposed purposes; (B) assuring a fair minimum return to beginning blind vending facility managers pursuant to 4 AAC 54.165; (C) maintenance and replacement of equipment; (D) the purchase of new equipment; and (E) management services.

4 AAC 54.165. "INCOME AND SET ASIDE FUNDS." The Committee does not concur with DVR's proposal to include provisions authorizing the establishment of set-aside charges to be assessed against the net proceeds of the vending facilities. The Committee is prepared to monitor the necessity for the Division to make such assessments in order to operate the vending facility program, but no present need is indicated. Hence, the Committee rejects the idea that DVR should establish in these rules advance permission to adopt unilaterally a set-aside system and schedule. In lieu of the rules for set-aside, the Committee proposes to include a provision which establishes each beginning manager's entitlement to a fair minimum return. This provision, to be incorporated in the rules at 4 AAC 54.165 is proposed to read as follows:

4 AAC 54.165. FAIR MINIMUM RETURN TO BEGINNING MANAGERS. The Division shall insure a fair minimum return to beginning vending facility managers during the first six months of operation of a vending facility and will make provisions to augment monthly income up to the state minimum wage.

4 AAC 54.170. "ADMINISTRATIVE REVIEW AND EVIDENTIARY HEARING." The Committee is in general agreement with DVR's proposed rules relating to grievance procedures available to blind vending facility managers. The Committee's only comments are in the nature of minor technical changes in language, in subsection (b), designed to simplify some of the provisions and bring them into line with general practice applying to evidentiary hearings. For example, although subpoena power is provided in judicial and administrative proceedings in Alaska, there is no specific authority for issuance of subpoenas in the proposed regulations. In addition, paragraphs (7), (10), and (11) appear to cover matters generally included under the topic of Discovery, and might be more simply incorporated by reference in a single provision. Finally, the Committee believes it would be appropriate to specify that the decision of the hearing officer, as described in paragraph (14), shall be final and binding, to avoid future problems in implementing the decision or securing enforcement.

The Committee has no objection to the language of subsection (a) as written. The Committee proposes that subsection (b) should read:

- (1) At the time of licensing, the division shall inform the vending facility operator in writing of his right to an evidentiary hearing and the procedures to be followed in obtaining one.
- (2) A vending facility operator, or his designee, must request an evidentiary hearing within fifteen (15) working days of any administrative review decision he wishes to appeal.
- (3) A written request for an evidentiary hearing stating the issues to be appealed must be transmitted to the director of the division personally or by certified mail with return receipt requested.
- (4) A vending facility operator is entitled to legal counsel or other representation in an evidentiary hearing.
- (5) The division shall schedule the hearing within fifteen (15) working days of its receipt of the written request unless the division and the operator mutually agree in writing to some other period of time. The division shall hold the hearing in the division office nearest the vendor during regular agency hours at a time convenient to the vending facility operator.

(6) The division shall notify the vending facility operator in writing of the time and place fixed for the hearing and of his right to legal counsel or other representation.

(7) The Division shall provide transportation and reader or other communication services to the vending facility operator when necessary.

(8) The hearing officer shall be an impartial official who has no involvement either with the state agency action which is at issue in the hearing or with the administration of the vending facility program. The hearing officer ~~may be a staff member of another agency...~~ *shall be a hearing state hearing officer as defined in A.S. 41.62.0571(a) or a state agency hearing officer.*

(9) (a) The vending facility manager and the Division may each call and examine witnesses; introduce exhibits; cross-examine opposing witnesses; impeach witnesses, regardless of which party originally calls the witness; submit rebuttal evidence; have access to all documents and records in the possession of the opposing party in accordance with the rules of civil procedure, and may take the deposition of any witness in accordance with the rules of civil procedure.

(b) Before the hearing begins, the hearing officer shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the rules of civil procedure.

(10) A transcript shall be made of the oral evidence and shall be made available to the parties. The division shall pay all transcript costs and shall provide the vending facility operator with at least one copy of the transcript.

(11) The transcript of testimony, exhibits and all papers and documents filed in the hearing shall constitute the exclusive record for the decision.

(12) The decision of the hearing officer shall be final and binding, and shall set forth findings of fact and conclusions of law sufficient for a determination of the issues presented for adjudication. The hearing officer shall state with particularity the reasons for his findings and the factual basis underlying his decision. The decision shall state any orders deemed consistent with the findings contained therein. Unless otherwise stipulated to by the parties, the decision shall be made within fifteen (15) working days of the conclusion of

and shall be mailed promptly to the vending facility manager, to the division, and to counsel of record, if any, by certified mail, return receipt requested.

(14) If a vending facility operator is dissatisfied with the decision rendered after an evidentiary hearing, he may request an Arbitration Panel be convened by filing a complaint with the Secretary of the Department of Education as authorized by Section 5(a) of the Randolph-Sheppard Act and 34 CFR 395.13(a) within fifteen (15) working days of his receipt of such decision.

Additional matters: The Committee believes that DVR's proposal fails to address certain vital matters which should legitimately be the subject of the Division's rules for the vending facility program. With this in mind, the Committee proposes adding the following provisions to the rules:

4 AAC 54.175. ACCESS TO PROGRAM AND FINANCIAL INFORMATION In accordance with 34 CFR Section 395.12, <sup>The Division</sup> shall provide program and financial information to each manager, to the extent that such disclosure does not violate the laws pertaining to the release of confidential information. In addition, the manager of a vending facility shall be furnished a copy of the rules and regulations, the licensing agreement, and the permit for the establishment and operation of the vending facility.

4 AAC 54.180 COMMITTEE OF BLIND VENDORS (a) Responsibilities:

(1) The Committee of Blind Vendors shall be responsible for performing all of the functions and obligations imposed on it pursuant to these rules and regulations. (2) In addition, the Committee shall

*Start here*

(A) actively participate with the <sup>agency</sup> Division in major administrative decisions and policy and program development decisions affecting the overall administration of the state's vending facility program;  
(B) receive and transmit to the Division grievances at the request of blind vending facility managers and serve as advocates for such managers in connection with such grievances; (C) actively participate with the Division in the development and administration of a state system for the transfer and promotion of blind vending facility managers;  
(D) actively participate with the Division in the development of training and retraining programs for blind vending facility managers; and (E) sponsor, with the assistance of the division, meetings and instructional conferences for blind vendors within *The State*

the state.

(b) Election: (1) All blind vending facility managers in Alaska shall hold membership on the Committee of Blind Vendors and shall be entitled to participate in the biennial election of a president, a vice president, and a secretary-treasurer, and such other officers as the Committee shall deem necessary. The election of the president and other officers shall occur at the regular annual meeting which the committee holds in each odd numbered year. (2) Vending facility managers shall not be required to pay dues, or any form of assessment, in order to participate on the committee or in the election of its president and other officers.

(c) Meetings: The Committee shall hold at least one regular annual meeting each year. In addition, the Committee members may confer at any time by means of the Division's teleconference equipment between annual meetings.

(d) Committee Expenses: (1) Each blind vending facility manager shall be reimbursed by the Division for all expenses incurred in connection with any service performed as a member or officer of the Committee of Blind Vendors (2) The Division shall pay such reimbursements to blind vending facility managers promptly upon submission of proper documentation, as required by the Division. (3) All expenses in connection with the functions and work of the Committee of Blind Vendors shall be paid for by the Division as management services.

4 AAC 54.185. RESPONSIBILITIES OF THE DIVISION:(a) The Division shall issue such forms, operating procedures, and reports, as deemed necessary to comply fully with these rules and regulations provided that all forms, operating procedures, and reports directly relating to the managers shall be developed with the concurrence of the Committee of Blind Vendors.

(b) The Division shall administer the vending facility program for the blind in a uniform manner on federal, state, and private property and shall conduct all of its administrative functions in accordance with applicable law, the provisions of these rules and regulations, and any policies jointly developed and agreed upon by the Division and the Committee of Blind Vendors.

4 AAC 54.190. "DEFINITIONS." As used in these regulations, the terms below are defined as follows:

q (a) "Demotion" means ~~reassignment~~ reassignment of a licensed vending facility manager~~s~~ to a vending facility which, according to the best evidence available, is likely to yield a significant decrease in net proceeds to the manager.

(b) "License" means a written instrument issued by the Division to a blind person, authorizing such person to operate a vending facility on Federal, State, or private property.

(c) "Licensee" means a blind person licensed<sup>l</sup> by the Division to operate a vending facility on Federal, State, or private property.

*Insert*  
*\**  
*e/f* (d) "Permit" means the authorization given the Division to establish a vending facility on Federal, State or private property,

*f* (e) "Promotion" means assignment of a licensed vending facility manager to a vending facility which, according to the best evidence available, is likely to yield a significant increase in net proceeds to the manager.

*g* (f) "Transfer" means lateral reassignment of a licensed vending facility manager to a vending facility where the net proceeds are expected to be substantially the same as <sup>the net proceeds</sup> ~~accrued~~ from the manager's previous facility.

*R* (g) "Vending Facility" means ~~any~~ automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, ~~and~~ confections tobacco products, foods; beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of

chances

~~for any lottery authorized by State law and conducted by an agency of~~

~~the State within such State.~~

*i* (1) "Vending Facility Program" means the Randolph-Sheppard Vending Facility Program as operated on Federal, State, or private property in the State of Alaska.

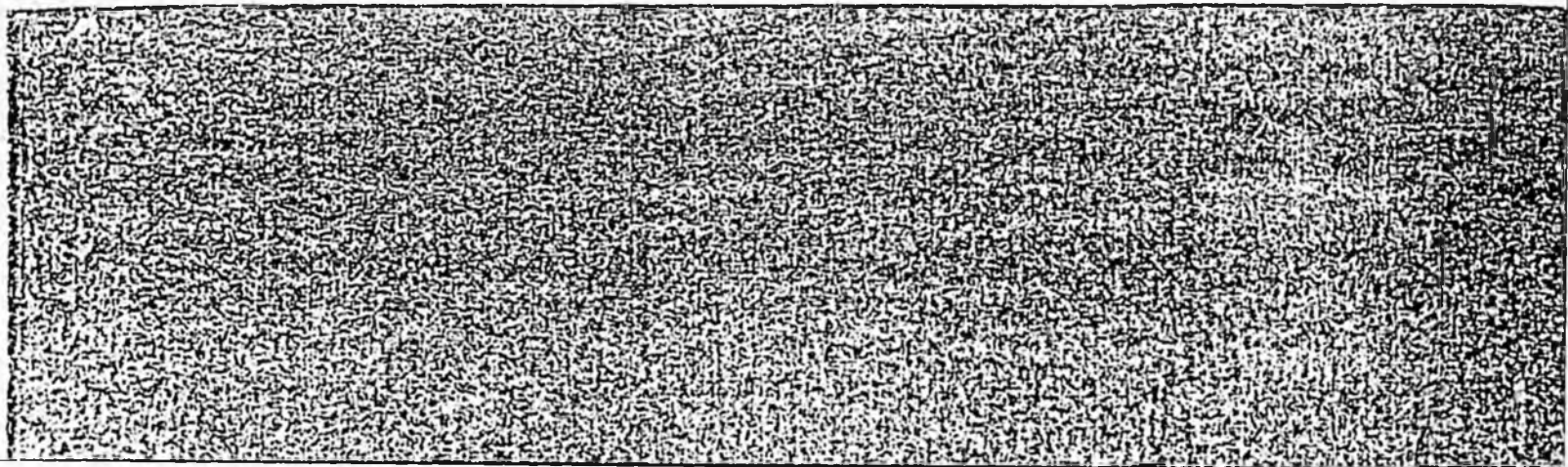
*j* (1) "Vending machine income" ~~means receipts (other than those of a blind vendor) from vending machine operations on Federal, State, or private property after deducting the costs of goods sold~~

means net proceeds from vending machines located on Federal, State, or private property which are paid to the Small Business Enterprise Revolving Fund.

*insert*

~~\*~~

(2) "Manager" means a blind licensee who is operating a vending facility on Federal, State, or private property.



Agreement for Operation  
of a Vending Facility  
Under Randolph-Sheppard Act

Between

THE ALASKA DIVISION OF VOCATIONAL REHABILITATION, State Licensing Agency,  
and \_\_\_\_\_, a Licensed  
Blind Manager.

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, by and between the Alaska State Licensing Agency (hereinafter  
referred to as the Division), and \_\_\_\_\_,  
licensed as a blind vendor under the Randolph-Sheppard Program (hereinafter  
referred to as the Manager), by the Division, WITNESSETH:

WHEREAS, the Division has been granted a permit by \_\_\_\_\_  
\_\_\_\_\_ for the operation of a vending facility by a licensed  
blind vendor under the Randolph-Sheppard Program (hereinafter referred to as  
the permit), on the federal property or non-federal property located at  
\_\_\_\_\_  
\_\_\_\_\_, a copy of which permit is attached  
hereto and made a part hereof; and

WHEREAS, the Division has offered the Manager the opportunity to operate  
the vending facility under the terms and conditions hereinafter set forth; and

WHEREAS, the parties do not intend to derogate in any way the responsi-  
bilities and rights imposed and granted by applicable federal, state, or  
local laws or regulations by this agreement;

NOW, THEREFORE, it is mutually agreed as follows:

A. THE DIVISION

(1) The Division will equip the vending facility for carrying out the  
business authorized by the permit.

(2) The Division will furnish initial stocks of merchandise and initial  
petty cash sufficient to enable the Manager to commence operating the business  
authorized by the permit. The Division will also furnish to the Manager, and  
incorporate as a part of this Agreement, a complete inventory of all equipment,  
initial stocks, and initial petty cash provided.

(3) The Division will maintain the equipment at the vending facility in good repair, and will replace obsolete and worn-out equipment as necessary in accordance with 4 AAC 54.150.

(4) The Division will provide, or will provide for, support and consultative services necessary for the efficient operation of the vending facility.

(5) The Division recognizes the State Committee of Blind Vendors as a representative body of all licensed Managers in the vending facility program and will assure the active participation of the Committee in policy development and administration on behalf of the Manager.

(6) The Division will afford the Manager an opportunity for an administrative review and a full evidentiary hearing in accordance with 4 AAC 54.170 and agrees to submit any grievances of the Manager, not otherwise resolved through such hearing, to binding arbitration as provided under 34 CFR Section 395.13.

B. THE MANAGER

(1) The Manager will be responsible for having the vending facility open for business on the days and during the hours specified in the permit.

(2) The Manager will operate the vending facility business on a cash basis except for such credit accounts as may be established or authorized by the Division.

(3) The Manager will be accountable to the Division for the proceeds of the business of the facility, but will retain the proceeds and handle disbursements in accordance with sound business practices, including making payments to suppliers and meeting all other financial obligations of the business.

(4) The Manager will carry on the business of the vending facility in compliance with applicable health laws and regulations.

(5) The Manager will maintain a neat, business-like appearance while working at the vending facility, and will conduct the facility in an orderly, business-like manner.

(6) The Manager will take proper care of the equipment of the vending facility, and will make alterations or changes therein only with the approval of the Division.

(7) The Manager will keep such records and make such reports as the Division shall require.

(8) The Manager will notify the Division a reasonable time in advance of taking any voluntary leave from the vending facility, and as soon as possible with respect to any involuntary leave.

(9) The Manager will provide for substitute operation of the vending facility as may be necessitated by the Manager's absence because of illness, vacation, or otherwise. The salary of the person who substitutes for the Manager, or that of other emergency help, shall be charged to the vending facility where the service is performed, except to the extent that it is otherwise covered by the vacation and sick leave plan provided by the Division.

(10) The Manager shall comply with applicable civil rights laws and rules and regulations prohibiting discrimination against employing or serving individuals because of their race, color, national origin, religion, ancestry, age, sex, or disability.

C. General

(1) The business to be carried on at the vending facility will be limited to that specified and authorized in the permit.

(2) The right, title, and interest in and to the equipment of the vending facility, the initial stock, and initial petty cash are vested in the Division and will be left at the vending facility or turned over to the Division on the termination of this agreement for any reason by either of the parties. Upon the termination of this agreement, the fair market value of the Manager's interest will be determined by the Division in conjunction with the Manager, his heirs, or assignees, and paid to the Manager, his heirs, or assignees. The Manager, his heirs, or assignees, shall have the right to participate in and verify the final inventory of equipment, stocks of merchandise, and funds on hand.

(3) Rebates, commissions, or bonuses received by the Manager from suppliers are, and must be accounted for as, income of the vending facility. Under no circumstances are such funds to be treated as the separate, personal funds of the Manager.

(4) The Manager agrees to obtain and maintain personal liability and products liability insurance in order to protect the Manager, anyone employed by the Manager, and the Division against losses and claims arising out of the conduct of the business of the vending facility.

The cost of such insurance shall be a cost of operating the business of the vending facility and taken into account as such in determining the net proceeds of the business.

(5) Merchandise taken from the stock and trade of the vending facility by the manager for his own use shall be accounted for by the vendor and paid for at cost prices.

(6) (a) This agreement may be terminated at any time by the Manager, provided that thirty (30) days written notice is given by the Manager if he wishes to withdraw from the program voluntarily. No notice is required by the Manager prior to terminating this agreement for reasons of promotion, transfers or demotion.

(b) This agreement shall be terminated by the Division upon the lawful revocation or termination of the permit or contract, and the Division shall insure that the revocation or termination of any permit or contract is in compliance with applicable federal and state laws or rules and regulations. In the event of revocation or termination of the permit or contract, the Division shall notify the Manager in advance and afford the Manager an opportunity for a full evidentiary hearing prior to the proposed termination of the vending facility.

(c) This agreement may be terminated by the Division if, after affording the Manager an opportunity for a full evidentiary hearing, it is determined that the business of the vending facility is not being conducted in accordance with this agreement, or with applicable federal, state, or local laws and regulations.

(7) Changes in the terms of this agreement which affect the individual operation of the vending facility may not be made unless by mutual consent of the Division and the Manager.

\_\_\_\_\_  
State Licensing Agency

Date: \_\_\_\_\_ by \_\_\_\_\_  
Title

Date: \_\_\_\_\_ by \_\_\_\_\_  
Vendor

Date: \_\_\_\_\_ by \_\_\_\_\_  
Witness

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REPORT OF VENDING FACILITY PROGRAM

Alaska AGENCY Voc. Rehabilitation D. # Oct. 1, 19 80 to Sept. 30, 19 81

EARNINGS STATEMENT

	Type of Facility				
	(1) Total	(2) Dry/Wet	(3) Snack	(4) Cafeteria	(5) Vending Machine
A. Federal and Other Locations					
1. Gross Income to Facilities (all sources)	369,213.	296,698.	59,925.		12,590.
2. Less: Merchandise Purchased and Other Operating Expenses	254,400.	201,303.	53,097.		
3. Net Proceeds (line 1 less line 2)	114,813.	95,395.	6,828.		12,590.
4. Less: Funds Set Aside	-0-		-0-		
5. Net Profit to Vendors (line 3 less line 4)	114,813.	95,395.	6,828.		12,590.
6. Amount Paid to Vendors as Fair Minimum Return	-0-	-0-	-0-		

Person Years of Employment

1. Vendors	4.75	3.75	1.00		
2. Other Visually Handicapped	-0-	-0-	-0-		
3. Other Handicapped	-0-	-0-	-0-		

NUMBER OF VENDING FACILITIES, VENDORS AND COSTS

A. Facilities and Vendors on Federal Property

	Type of Facility				
	(1) Total	(2) Dry/Wet	(3) Snack	(4) Cafeteria	(5) Vending Machine
1. Facilities					
a. Number of facilities established	0				
b. Number of facilities refurbished	0	0	0	0	0
c. Number of facilities closed	0	0	0	0	0

Vendors

a. Number of vendors entering program	0	0	0	0	0
b. Number of vendors terminated	1	1	0	0	0

1. Facilities	Type of Facility				
	(1) Total	(2) Wet/Dry	(3) Snack	(4) Cafeteria	(5) Vending Machines
a. Number of facilities established	0				
b. Number of facilities refurbished	0				
c. Number of facilities closed	0				

2. Vendors					
a. Number of vendors entering program	1	1			
b. Number of vendors terminated	1	1			

3. Cost Data					
1. Total cost of establishing new facilities	14,344.	14,344.			
2. Total Cost of Maintenance and Replacement of Equipment for Facilities	1,502.	1,502.			
3. Total cost of refurbishing facilities					

**MACHINE INCOME FUNDS COLLECTED UNDER THE VENDING FACILITY PROGRAM**

	(1) Federal Property	(2) Non-Federal Property	(3) Total
1. Total Vending Machine Income (line 2 + line 3)	4,382.	-0-	4,382.
2. Distributed to Vendor	4,163.	-0-	4,163.
3. Retained by State as Unassigned Income for Set-Aside Purposes	219.	-0-	219.

**ACCOUNTABILITY OF SET-ASIDE FUNDS COLLECTED UNDER THE VENDING FACILITY PROGRAM**

	(1) Machine Income	(2) Levied	(3) Total
1. Amount on Hand at Beginning of Year	8,252.	15,605.	23,857.
2. Funds Added During Year	219.	-0-	219.
Total Funds Available (line 1 + line 2)	8,471.	15,605.	24,076.
3. Total Expenditures (Refund)	-0-	(526.)	(526.)
4. Total on Hand at End of Year	<u>8,471.</u>	<u>16,131.</u>	<u>24,602.</u>

EXPENDITURES FOR THE VENDING FACILITY PROGRAM

	Set-Aside					(6) Federal
	(1) Machine Income		(3) Levied	(4) State	(5) Total	
	Fed.	Non Fed.				
1. Maintenance of Equipment						
2. Replacement of Equipment				581.	1,502.	921.
3. Purchase of Equipment for Establishment of New Facilities						
4. Management Services			(526.)	5,731.	(1) 14,291.	9,086.
5. Fair Minimum Return						
6. Retirement/Pension Program						
7. Health Insurance Program						
8. Paid Sick Leave and Vacation Time						
9. Initial Stock and Supplies	XXXXXX		XXXXXX	11,779	30,453	18,674.

(1) For the purposes of this report, 30% of the Facility Specialist's salary is shown for program management.

VENDOR EARNINGS BY RANGE

Type	0 \$6,000	\$6,001 10,000	\$10,001 14,000	\$14,001 19,000	\$19,001 24,000	\$24,001 29,000	\$29,001 44,000	\$44,001 50,000	\$50,001 Above	Total
Dry/Wet			1	1	1				1	4
Snack		1								1
Cafeteria										
Vending Machine										
TOTAL		1	1	1	1				1	5

TRAINING DURING THE FISCAL YEAR

Individuals Provided Initial Training	
a. Number Licensed and Placed as Vendors	1
b. Number Certified Awaiting Placement as Vendors	0
c. Number Placed as Employees in the Program	1
d. Number Employed in Allied Food Service Occupations	0
Average Number of Days of Formal Upward Mobility Training Provided	
a. Formal In-service Training	1
b. Formal Training Requiring Extended Leave of Absence	0

NUMBER OF SITES SURVEYED

	Type of Property		
	(1) Federal	(2) Non-Federal	(3) Total
Total sites surveyed	0	2	2
Accepted for vending facility site	0	1	1
Not accepted due to infeasibility of site	0	1	1
Not accepted due to lack of funds by State Agency	0	0	0
Denied by property management official	0	0	0

NUMBER OF STATE AND NOMINEE AGENCY PERSON YEAR POSITIONS ASSIGNED TO THE VENDING FACILITY PROGRAM

NUMBER OF VENDING FACILITIES ON FEDERAL PROPERTY BY FEDERAL AGENCY GRANTING PERMIT

Name of Federal Agency	(1) Established During Year	(2) Closed During Year
U.S. Postal Service	-0-	-0-
General Services Administration	-0-	-0-
Department of Defense	-0-	-0-
Department of Health, and Human Services	-0-	-0-
Department of Education	-0-	-0-
Other (Identify)	-0-	-0-

CERTIFICATE

This report is completed and correct to the best of my knowledge.

11/10/81

Signed [Signature]  
Signature of Authorized Official

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
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An Analysis of  
Alaska's  
Randolph-Sheppard  
Vending Stand Program

Prepared by: John F. Schlicting  
Chief of Planning & Research

*When? Date?*

Historically the Alaska Division of Vocational Rehabilitation has expended significant resources in support of the vending stand program. Costs of establishing and remodeling the various vending stands presently being operated by our vendors totals over \$155,736. Expenditures from FY'76 thru the present for the various stands operated by the agency are broken out below.

<u>Vending Stand</u>	<u>Establishment and/or remodeling costs</u>
Anchorage Gift Specialty	\$ 64,436*
Anchorage Post Office	\$ 23,300
Sitka Mount Edgcomb	\$ 17,100**
Anchorage Dry Stand	\$ 15,000
Juneau SOB	\$ 35,900
<b>Total</b>	<b>\$ 155,736</b>

\* Includes 12,600 not yet expended.

\*\* Remodeling costs only.

In addition to these costs are monies spent on services to the clients who are to operate the stands. These costs and the number of vendors are given in the table below for FY'76 thru the present.

<u>FY</u>	<u>Number of Vendors</u>	<u>Total Cost</u>	<u>Per vendor</u>
82	2	\$24,541	\$12,270
81	0	0	0
80	0	0	0
79	1	\$ 6,658	\$ 6,658
78	2	\$ 6,661	\$ 3,330
77	2	\$ 6,488	\$ 3,244
76	0	0	0
<b>Total</b>		<b>\$44,348</b>	<b>\$ 6,335</b>

\* Exclusive of costs directly associated with establishing or remodeling the vendor's stand.

Comparatively, the costs of average services to clients, and clients with visual disabilities who were closed during the period from FY'76-81 are given below.

<u>FY</u>	<u>Average Cost Per Accepted Cost Closure</u>		
	<u>All Closures*</u>	<u>All Visual*</u>	<u>Vendors</u>
81	2195	2467	0
80	1663	1789	0
79	1664	2713	6658
78	1594	1107	3330
77	1446	2669	3244
76	1386	1284	0

\* Excludes vendors

Average expenditures for services to vendors and other closed clients over the six year period from 1976 thru 1981 are given in the table below.

FY 76-81 Inclusive costs/client

	<u>Blind Less Vendors</u>	<u>All Others</u>	<u>Vendor Service Less Stand Costs</u>	<u>All Vendor Services</u>
Average Cost/Rehab	2,159	2,020	3,753	42,687
Average cost/Served	1,983	1,591	3,514	34,663

From the above several facts emerge. First of all, the data seems to rather conclusively indicate is that by and large expenditures to visually impaired persons have generally trended above similar expenditures for non visually impaired VR clients. Comparatively case services costs to visually impaired persons closed as vending stand operators, exclusive of costs associated with establishing and equipping their stands, were substantially higher than comparable average costs for both other visually impaired, and other clients. Finally, when vending stand establishment costs associated with specific vendors are added into their other rehabilitation costs, the resulting figure exceeds average costs for all clients by of more than a factor of ten.

Detailed breadouts of average costs per accepted case closure by major disability grouping for Fiscal Year 76-81 inclusive are given appendix 1 of this report. Appendix 2 contains a breakout of the costs (including vending stand establishment/remodeling costs charged to their cases) for the seven vendors whom I examined.

Policies of other state agencies

In order to ascertain how this agency's policies towards its vendors compare with those of other states, I conducted a telephone survey of state VR and blind agencies in Region's VIII, IX and X concerning their policies in this area. In this regard I was able to obtain data from all of the state agencies except the North Dakota Division of Vocational Rehabilitation whose Randolph-Sheppard administrator was unavailable. The questions I asked were as follows:

- 1) How much paid vacation do you give your vendors per year?
- 2) Do you provide health insurance to your vendors?  
If yes, is it:
  - a) Fully paid by the state agency?
  - b) Partially paid by the state agency?
  - c) Is the vendor's family covered?

- 3) Do you provide your vendors with paid sick leave?  
If yes, how much per year?
- 4) Are vendors covered by an agency sponsored retirement plan?
- 5) Are vendors required to obtain prior approval from the state agency before they raise prices?
- 6) What are the consequences of filing late reports, or failure to file reports?

#### Paid Vacation

Of the 13 states besides Alaska that were surveyed only three offered any form of paid vacation to their vendors. Of these three only Utah provided their vendors with as much vacation time as did Alaska.

#### Health Insurance

Only one other state agency, the Idaho commission for the blind, offered health insurance that was fully paid by the state agency. Two more agencies, Arizona Blind, and Hawaii combined offered health insurance partially paid by the state. Only Alaska provided fully state agency paid health insurance coverage for the families of vendors.

#### Paid Sick Leave

Only one agency, South Dakota combined currently has any kind of sick leave program. They provide their vendors with one week per year. Alaska presently has a sick leave plan under consideration.

#### Retirement Plan

Only three of the agencies surveyed had any kind of retirement plan for their vendors. In most cases these were some form of Individualized Retirement Account which the state and/or the vendor made contributions to. Alaska is presently in the process of setting up Individualized Retirement Accounts for its vendors.

#### Agency Policy on Raising Prices

Four other agencies besides Alaska required vendors to seek agency approval prior to raising prices. When queried as to the consequences of not obtaining such approval, all the agencies queried indicated that this was largely a "rubber stamp" function on the part of the agency, and none reported serious consequences for non-compliance.

#### Consequences of Late Reports, or Failure to File Reports

Five agencies reported specific sanctions which they levy against vendors who are tardy with or who fail to submit reports. These ranged from fines, to dismissal from the vending stand program. In addition several

agencies who reported no specific policy of punishing such offenses indicated that timely submission of reports was a condition for promotion into a larger stand.

A more complete breakout of the individual states survey responses is given in attachment 3.

It seems fairly clear from the survey results that Alaska's vendors enjoy considerably more benefits than do their counterparts in other states in the three regions surveyed. At three weeks a year their annual leave is greater than or equal to that offered by any other states. The health insurance plan which we provide for our vendors is unmatched by any state surveyed. Indeed no state comes close to Alaska in terms of the total benefit package provided to its vendors.

Also the agency is relatively lenient where delinquent reports or failure to submit reports is concerned. Whereas vendors in other states face fines or even dismissal for such transgressions, those in Alaska get off with verbal or written warnings.

APPENDIX 1

FY'81

Disability	26 Closures			28 Closures			30 Closures			26, 28, 30 Closures		
	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client
100-109 Totally Blind	6	15,953	2,659	3	4,839	1,613	0	0	0	9	20,792	2,310
110-119 Blind both eyes some lite Pr.	6	31,132	5,855	5	1,984	496	0	0	0	11	33,116	3,010
120-149 Blind one eye & other visual	19	58,804	3,094	1	679	679	0	0	0	20	59,483	2,974
200-219 Deafness	22	39,526	1,797	4	18,361	4,590	3	292	97	29	58,179	2,006
220-229 Other hearing	32	27,491	859	5	6,326	1,265	2	337	169	39	34,154	876
300-399 Ortho	179	484,940	2,709	44	88,067	2,002	47	15,935	339	270	588,942	2,181
400-449 Amputation	16	64,023	4,001	1	7,291	7,291	0	0	0	17	71,314	4,195
500 Psychotic	17	36,677	2,157	6	20,866	3,478	5	734	147	28	58,277	2,081
510 Psychoneurotic	43	96,428	2,243	20	22,367	1,118	5	1,195	239	68	119,990	1,765
520-522 Other behavioral	57	167,450	2,938	17	27,629	1,625	7	1,200	171	81	196,279	2,423
530-534 Mental Retardation	69	160,493	2,326	12	45,776	3,814	5	709	141	86	106,978	2,407
600-699 Other	78	169,865	2,178	31	51,673	1,667	16	5,567	348	125	227,105	1,817
All disabilities	544	1,356,781	2,494	149	336,360	2,257	90	25,962	288	783	1,718,949	2,195
Vendors	0	0	0	0	0	0	0	0	0	0	0	0
100-119 All visual	31	105,874	3,415	9	7,503	834	0	0	-	49	120,874	2,467

FY'80

Disability	26 Closures			28 Closures			30 Closures			26, 28, 30 Closures		
	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client
100-109 Totally blind	5	20,636	4,127	1	1,400	1,400	0	0	0	6	22,306	3,673
110-119 Blind both eyes some lite pr.	8	21,954	2,744	0	0	0	3	473	157	11	22,427	2,038
120-149 Blind one eye & other visual	31	10,549	337	4	6,551	1,637	1	185	185	36	17,285	480
100-219 Deafness	21	26,463	1,260	6	45,861	7,643	5	886	177	32	73,210	2,288
220-229 Other hearing	38	30,799	810	10	8,184	818	7	2,133	304	55	41,116	748
300-399 Ortho	156	402,046	2,577	62	79,847	1,288	83	7,493	90	301	489,386	1,626
400-449 Amputation	13	38,722	2,978	3	3,648	1,228	3	128	43	19	42,498	2,237
500 Psychotic	14	20,039	1,431	9	8,583	954	6	771	128	48	71,891	1,498
510 Psychoneurotic	28	58,100	2,075	11	21,693	1,972	6	2,235	373	45	82,028	1,823
520-522 Other behavioral	48	101,744	2,119	30	71,163	2,372	12	3,094	258	90	176,001	1,956
530-534 Mental retardation	52	81,404	1,565	16	18,240	1,140	3	243	81	71	99,887	1,407
600-699 Other	71	196,103	2,762	30	57,619	1,920	17	3,609	212	118	257,331	2,180
All disabilities	485	1,008,328	2,079	182	322,804	1,774	146	21,217	145	813	1,352,353	1,663
Vendors	0	0	0	0	0	0	0	0	0	0	0	0
100-119 All visual	93	173,909	1,870	5	7,948	1,590	4	656	164	102	182,516	1,789

FY'79

Disability	26 Closures			28 Closures			30 Closures			26, 28, 30 Closures		
	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client
100-109 Totally blind	3	9,293	3,097	0	0	0	0	0	0	3	9,293	9,293
110-119 Blind both eyes some lite pr.	6	6,149	1,025	2	4,223	2,111	1	8,930	8,930	9	19,302	2,145
120-149 Blind one eye & other visual	17	62,791	3,694	5	11,437	2,287	1	28	28	23	93,558	2,924
200-219 Deafness	24	42,975	1,791	7	13,447	1,921	3	91	30	34	56,513	1,662
220-229 Other hearing	45	52,941	1,154	27	23,452	869	3	147	49	75	75,540	1,007
300-399 Ortho	115	298,941	2,599	67	64,931	969	52	7,523	145	234	371,395	1,587
400-449 Amputation	14	21,320	1,523	5	5,556	1,111	3	439	146	22	27,315	1,242
500 Psychotic	12	34,307	2,859	18	22,065	1,226	5	179	36	35	56,551	1,616
510 Psychoneurotic	33	80,764	2,447	15	18,036	1,202	9	1,396	155	57	100,196	1,758
520-522 Other behavioral	45	124,427	2,765	46	58,092	1,263	11	2,022	184	102	184,451	1,809
530-534 Mental retardation	42	114,608	2,729	39	44,900	1,151	4	572	143	85	160,080	1,883
600-699 Other	85	170,949	2,011	26	31,436	1,209	15	2,246	150	126	204,631	1,624
All disabilities	441	1,018,397	2,309	257	297,564	1,158	107	23,594	220	805	1,339,415	1,664
Vendors	0	42,507	42,507	0	0	0	0	0	0	1	42,507	42,507
All less vendors	440	975,890	2,217	0	0	0	0	0	0	804	1,293,908	0
All visual	26	78,239	3,009	7	15,657	2,236	2	8,958	4,479	35	240,752	4,021
All visual less vendors	25	35,732	1,429	0	0	0	0	0	0	34	92,245	2,713

P O S E T I N E A M

FY'78

Disability	26 Closures			28 Closures			30 Closures			26, 28, 30 Closures		
	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client
100-109 Totally blind	3	11,017	3,672	3	1,810	603	1	0	0	7	12,827	1,832
110-119 Blind both eyes some lite pr.	5	17,059	3,411	0	0	0	0	0	0	5	17,059	3,411
120-149 Blind one eye & other visual	12	17,546	1,462	8	8,267	1,033	7	2,192	313	27	28,005	1,037
200-219 Deafness	15	19,477	1,298	11	22,960	2,087	1	37	37	27	42,474	1,573
220-229 Other hearing	52	52,203	985	17	18,968	1,116	6	457	76	75	70,628	942
300-399 Ortho	100	270,243	2,702	72	91,483	1,271	45	5,279	117	217	367,005	1,691
400-449 Amputation	16	41,751	2,609	5	3,185	637	1	34	34	22	44,970	2,044
500 Psychotic	10	14,540	1,454	17	34,637	2,037	2	634	317	29	49,811	1,718
510 Psychoneurotic	15	45,307	3,020	13	14,643	1,049	9	1,692	188	37	61,642	1,666
520-522 Other behavioral	34	80,295	2,362	43	48,627	1,131	4	532	138	81	129,454	1,598
530-534 Mental retardation	43	90,973	2,116	40	36,563	914	10	2,277	228	93	129,813	1,396
600-699 Other	80	198,271	2,478	45	70,219	1,560	15	3,243	216	140	271,733	1,941
All disabilities	385	857,625	2,228	274	350,358	1,279	101	16,381	162	760	1,225,384	1,612
Vendors	2	16,928	8,464	0	0	0	0	0	0	2	16,928	8,464
All less vendors	383	840,697	2,195	0	0	0	0	0	0	758	1,208,456	1,594
All visual	20	46,615	2,281	11	10,073	916	8	2,192	274	39	57,888	1,484
All visual less vendors	18	29,687	1,649	0	0	0	0	0	0	37	40,960	1,107

FY'77

Disability	26 Closures			28 Closures			30 Closures			26, 28, 30 Closures		
	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client
100-109 Totally blind	2	8,460	4,230	1	30,786	30,786	0	0	0	3	30,246	13,082
110-119 Blind both eyes some lite pr.	5	10,834	2,167	2	317	159	2	87	44	9	11,238	1,248
120-149 Blind one eye & other visual	20	83,521	4,176	8	6,439	805	1	289	289	29	90,249	3,112
200-219 Deafness	9	36,939	4,104	11	13,285	2,208	1	348	348	21	50,572	2,408
220-229 Other hearing	110	56,649	515	18	9,106	506	2	299	150	130	66,054	508
300-399 Ortho	106	207,315	1,956	71	66,426	936	26	2,595	100	203	276,336	1,361
400-449 Amputation	12	25,439	2,120	10	70,515	1,052	2	410	205	24	36,364	1,514
500 Psychotic	16	39,205	2,450	17	77,703	2,218	2	37	18	35	76,945	2,198
510 Psychoneurotic	28	46,863	1,674	25	26,866	1,075	3	701	234	56	74,430	1,329
520-522 Other behavioral	34	51,244	1,507	43	49,390	1,149	5	980	196	82	101,614	1,239
530-534 Mental retardation	51	134,128	2,630	40	85,907	2,148	2	74	39	93	220,109	2,367
600-699 Other	69	116,725	1,692	41	54,929	1,340	15	5,315	354	125	176,969	1,416
All disabilities	462	817,365	1,769	287	391,764	1,365	61	11,137	183	810	1,220,196	1,506
Vendors	1	20,701	20,701	1	30,786	30,786	0	0	0	2	51,487	25,744
All less vendors	461	796,664	1,728	286	360,978	1,252	0	0	0	808	1,168,709	1,446
All visual	27	102,815	3,808	3	31,103	10,348	3	337	126	33	134,238	4,068
All visual less vendors	26	82,114	3,158	2	317	159	0	0	0	31	82,751	2,669

FY'76

Disability	26 Closures			28 Closures			30 Closures			26, 28, 30 Closures		
	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client	#	Total	\$/Client
100-109 Totally blind	0	0	0	1	951	951	0	0	0	1	951	951
110-119 Blind both eyes some lite pr.	5	5,967	1,193	0	0	0	0	0	0	5	5,967	1,193
120-149 Blind one eye & other visual	11	18,081	1,644	7	7,108	1,015	1	0	0	19	25,189	1,326
200-219 Deafness	19	18,606	979	2	5,767	2,884	3	145	48	24	24,518	1,022
220-229 Other hearing	107	42,692	399	19	17,486	920	5	141	28	131	60,319	460
300-399 Ortho	132	241,265	1,828	54	67,476	1,250	19	873	46	205	309,614	1,510
400-449 Amputation	12	27,705	2,309	6	10,147	1,691	0	0	0	18	37,852	2,103
500 Psychotic	15	20,566	1,371	13	13,393	1,030	1	92	92	29	34,051	1,174
510 Psychoneurotic	25	54,109	2,164	11	25,775	2,343	2	76	38	38	79,960	2,104
520-522 Other behavioral	65	102,001	1,569	42	44,790	1,066	5	441	88	112	147,232	1,315
530-534 Mental retardation	37	83,191	2,248	24	53,657	2,235	0	0	0	61	136,848	2,243
600-699 Other	93	161,812	1,740	41	64,680	1,578	9	806	90	143	227,298	1,589
All disabilities	521	775,993	1,489	220	311,223	1,415	45	2,776	57	786	1,089,634	1,386
Vendors	0	0	0	0	0	0	0	0	0	0	0	0
100-119 All visual	16	24,049	1,503	8	8,056	1,007	1	0	0	25	32,104	1,284

APPENDIX 2

<u>Vendor</u>	<u>Total \$ Spent*</u>
1	\$ 7,701
2	9,227
3	42,507
4	30,786
5	24,631
6	3,204
7	29,987
Total	<u>\$148,043</u>

\* Includes vending stand establishment costs associated with each vendors case.

APPENDIX 3

**State Agency Vendor Policy Survey Results**

<u>State Agency Type</u>	Region X				Region IX				Region VIII				
	<u>Alaska Combined</u>	<u>Idaho Blind</u>	<u>Washington Blind</u>	<u>Oregon Blind</u>	<u>California Combined</u>	<u>Nevada Blind</u>	<u>Arizona Blind</u>	<u>Hawaii Combined</u>	<u>Colorado Combined</u>	<u>Montana Blind</u>	<u>S. Dakota Combined</u>	<u>Wyoming Combined</u>	<u>Utah Blind</u>
1) Paid vacation for vendors.	3 weeks per year	No	Yes vendor paid \$1000 a year.	No	No	No	No	No	No	No	1 week	No	3 wks
2) Health insurance:	Yes	Yes	No	No	No	No	Yes	Yes	No	No	No	No	No
a. Fully paid by agency.	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
b. Partially paid.	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	N/A
c. Family covered.	Yes	No	N/A	N/A	N/A	N/A	No	Yes	N/A	N/A	N/A	N/A	N/A
3) Paid sick leave.	Under Consideration	No	No	No	No	No	No	No	No	No	1 week	No	No
4) Retirement Plan	Setting up IRA	Yes	No	No	Yes	No	No	Yes	No	No	No	No	No
5) Agency Approval to raise prices	Yes	No	Yes Conditional	Yes	Yes	No	No	No	No	No	No	No	Yes
6) Consequences of late reports or failure to file reports.	None	None	Warnings, removal from stand.	Fine Warnings, & removal from stand. probation.	Warnings, & removal from stand. probation.	Fine	None	None	Fine & dismissal from program.	None	None	Fine	None

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.



Historically, the basic approach from both the Division and others involved has allowed the problem that exists to develop. The complaints that have evolved; as a result of this, are highly personal in nature and have no basis in fact.

The Review Team recommends that representatives of both DVR and the Blind Vendors Committee meet to resume development of the State regulations governing the program and present them to the Division Director and the Advisory Board to DVR by November 30, 1981 for review and approval. The members of the team recommended by the Review Committee for the Division should be the Chief of Services, the Facilities Specialist and the Anchorage based counselor for the blind.

The basic rationale for the complaints presented appears to be interpretation of State and Federal Laws concerning both programs. The proper forum for that conflict is that of the Court System or Legislative Procedures and may not be judged by the Review Team.

Further, the Review Team recommends that the Division explore the possibility of contracting with professional people within the State to supply services required in the set up phase of the vending stands. It is felt that training could be incorporated during the set up phase as well. This method would prove more cost effective and take less staff time.

Overall, the finding of the Review Team is that less energy would be expended with a more positive effect if the principal parties were to take a more positive approach to the existing problems within the program and work toward a solution without the benefit of third parties.

The Review Team feels that the DVR Director needs to evaluate the staff resources and dollars being expended for the percentage of clientele involved in this particular program.

Sincerely,

Karen Williams, Review Team  
Chairman

KW/gaf

STATEMENT OF FINDINGS AND POLICY ON  
RULES AND REGULATIONS FOR THE VENDING FACILITY PROGRAM  
FOR THE BLIND OF ALASKA

?  
Who wrote  
when, where,  
implemented?

The Board of Education has reviewed proposed rules which the Division of Vocational Rehabilitation has submitted for promulgation. ~~The Board is also aware that the Alaska Committee of Blind Vendors has expressed concern over lack of participation in the development of these proposed rules.~~

We are mindful of the Randolph-Sheppard Act and regulations of the United States Department of Education which require "active participation" by the state committee of blind vendors in policy development and in certain aspects of administration of the vending facility program for the blind. The Board is concerned that "active participation" by the state committee of blind vendors has not developed in Alaska in the manner called for in the federal act and regulations.

It is particularly appropriate that there be substantial involvement by the vendors' committee in writing and submitting rules for approval by this Board. Our review of documents and statements submitted by the parties involved to date indicates that "active participation" by the vendors' committee has not occurred to a sufficient degree thus far in the process of preparing these rules for promulgation. Accordingly, the ~~Board~~ hereby adopts the following statement of policy:

- ~~(1) The Division of Vocational Rehabilitation and the Committee of Blind Vendors should resolve existing differences over regulatory provisions for the vending facility program and submit an agreed upon set of rules to the Board of Education for consideration and approval.~~

- (2) The process of "active participation" by which an agreement between the Division and the Committee is to be reached shall be governed by the following ground rules:
  - (a) The Division and the Committee agree that two representatives designated by each will meet for as much time as is necessary to resolve differences in program regulations drafted by the Division as opposed to those proposed by the Committee. The time and place of such meeting will be established by mutual agreement of the parties involved, with at least three weeks notice.
  - (b) The representatives of the Division and Committee do not have the power to bind either party to any position agreed upon, however, the representatives are instructed by the Division and the Committee to negotiate a package agreeable to them. Once this has been done and an agreement has been signed, the representatives shall recommend the package for acceptance by the entire Committee of blind vendors and responsible Division personnel.
  - (c) Once the package is negotiated, there shall be a report attesting to the agreement reached by the representatives of the Division and the Committee and bearing the signatures of at least one Division representative and one Committee representative. A copy of the agreed upon regulations, which the representatives have jointly agreed to propose, and a copy of any other agreed upon documents related there-to shall be attached to the signed report.

- (d) The Division and the Committee shall be each entitled to designate one advisor to provide legal interpretation and otherwise to assist in reconciling the difference of the parties. The names of the representatives and advisors (if designated) shall be exchanged in writing no later than three weeks in advance of the scheduled date agreed upon for the negotiations.
- (3) It is the position of the Board that the regulations to be developed should govern a single, unified vending facility program for the blind, covering all blind vendors in the state, regardless of whether a given vending facility is located on federal, state, or private property. In adopting this policy, the Board recognizes the Alaska statute authorizing the establishment of vending facilities to be operated by the severely handicapped. However, the Board believes that this program can best be implemented outside of the context of the blind vending program regulations which are governed by Federal requirements in many respects.

Register

EDUCATION

4 AAC 54.300

4 AAC 54.310

Section

- 300. Scope of Regulations
- 310. Prerequisites for Training of Vending Facility Managers
- 320. Training of Vending Facility Managers
- 330. Certification of Trained Vending Facility Managers
- 340. Licensing of Certified Vending Facility Managers
- 350. Reimbursement
- 360. Continuing Education
- 370. Responsibilities of a Licensee
- 380. Vending Facility Staffing
- 390. Establishment of Vending Facility Locations
- 400. Equipment, Fixtures and Initial Stock
- 410. Repair and Replacement of Equipment and Fixtures
- 420. Termination of Business
- 430. Distribution and Use of Vending Machine Income
- 440. Income and Set-Aside Funds
- 450. Access to Program and Financial Information
- 460. Revocation of Licenses
- 470. Administrative Review
- 480. Evidentiary Hearing

4 AAC 54.300. SCOPE OF REGULATIONS. Sections of this chapter apply to the Randolph-Sheppard Vending Facility Program (P.L. 83-565 as amended) administered by the Division of Vocational Rehabilitation and the state vending facility program established under AS 23.15.100 (b) and AS 23.15.130. (Eff. / / , Register )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

The scope of the regulations refers to the fact that these regulations are designed to operate 2 separate and distinct vending programs, one authorized by federal law and one authorized by state law, with the differences in the two outlined clearly.

4 AAC 54.310. PREREQUISITES FOR TRAINING OF VENDING FACILITY MANAGERS. (a) The division will provide training in vending facility management to an applicant who meets the following requirements:

- (1) The applicant has had no previous training as a vending facility manager; and
- (2) for placement in vending facilities on federal property, the applicant is blind and a citizen of the United States; or

(3) for placement in vending facilities on state property, the applicant is blind or severely handicapped.

(b) The division may provide training in vending facility management to an applicant meeting the requirements of (a)(2) or (3) of this section.

(c) Unless waived by the director for good cause shown, the applicant shall:

(1) have had a complete physical examination within the preceding six months, including an eye examination by an ophthalmologist or an optometrist if the applicant is blind;

(2) <sup>vocational</sup> have completed a <sup>to determine</sup> psychological evaluation within the preceding six months showing that the applicant's personality and aptitude are <sup>compatibility</sup> compatible with management of a vending facility;

(3) have sufficient educational skills, knowledge, and capacity to benefit from on-the-job and formal training in the operation of a vending facility;

(4) be able to work an eight hour day, five days a week, based on the physical examination, ~~psychological evaluation~~ and work evaluation during placement in an actual vending facility setting for a minimum of thirty days; and

~~(5) show evidence of good personal hygiene and grooming. (Eff. 11, Reg. 3)~~

*rec'd TB Test Authority AS 23.15.020(c)  
good handler's permit AS 23.15.100(b)(6)*

COMMENT:

Section (a)(2) and (a)(3) defines the differences in eligibility in the two programs.

Section (c) provides for specific diagnostic information to be gathered to insure the individual is capable of functioning as an independent business person. Physical stamina, mental ability and emotional stability are also requirements. This information is in line with standard diagnostic procedures for any individual receiving rehabilitation services and developing an appropriate vocational goal in line with his/her abilities, aptitudes, interests, and disability.

Section (c)(5) referring to personal hygiene has become increasingly important due the nature of the work in dealing with food and in dealing with the public. It has been a problem area in the past.

4 AAC 54.320. TRAINING OF VENDING FACILITY MANAGERS. (a) The division will determine the training necessary to prepare an applicant to operate as a manager of a vending facility on an individual basis. The training may include:

- (1) personal and vocational adjustment;
- (2) business management (e.g. customer relations, business mathematics, merchandising, inventory control, financial reporting, taxation and accounting procedures);
- (3) food handling and preparation;
- (4) books, tests, and other training devices or materials; and
- (5) relocation out-of-state for temporary periods of time. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

Federal law under Randolph-Sheppard (section 1369.11) requires the State Licensing Agency provide training in all aspects of vending facility operation. Lack of specific programs for the blind in this state have often required potential vendors be sent to approved programs out of state for the appropriate training. Efforts are made to provide adequate training in-state through local programs.

4 AAC 54.330. CERTIFICATION OF TRAINED VENDING FACILITY MANAGERS. (a) The division will certify an applicant for vending facilities on federal property who meets the requirements of 4 AAC 54.310(a)(2) and who has successfully completed the training program described in 4 AAC 54.320.

(b) The division will certify an applicant for vending facilities on state property who meets the requirements of 4 AAC 54.310(a)(3) and who has successfully completed the training program described in 4 AAC 54.320.

(c) An applicant who meets the requirements of 4 AAC 54.310(a)(2) and (3) and who has successfully completed the training program described in 4 AAC 54.320 shall be certified in both vending programs.

(d) A person who is certified in a vending program shall be enrolled on the vending program roster for placement in a vending facility as a substitute manager. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

## COMMENT:

The certification process assures that the applicant meets all the eligibility criteria for the specific program. This is a requirement under 1369.7 of the federal regulations.

4 AAC 54.340. LICENSING OF CERTIFIED VENDING FACILITY MANAGERS. (a) The division will license a certified vending facility manager into a vending program when:

(1) a vending facility in that vending program is available for immediate placement; and

(2) the division and the eligible manager have entered into a written operating agreement.

(b) A temporary license is issued for an initial six month evaluation period. Following ~~successful completion~~ of the six month period, a permanent license will be issued. The license is for an indefinite time, is not transferable and is revocable. The license does not authorize the holder to operate a vending facility at a location other than that described in the license.

(c) The division will apply the following priorities in the order listed to select a certified vending vending facility manager for licensure:

(1) A current licensee who requests a new location. When more than one licensee requests promotion or transfer to another facility, the division will review each candidate based on seniority, training, and past performance;

(2) a certified vending facility manager who has demonstrated his ability to manage a facility. When more than one manager requests placement in a facility, the division will review each candidate based on seniority, evaluations by the the division staff and evaluation reports filed by licensees for whom the manager has worked;

(3) a former licensee who desires to return to a vending program and whose previous record demonstrates his ability as a licensee. The division will review each candidate based on training, experience, past performance and reason for leaving the vending program. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

## COMMENT:

Section (a)(1) deals with placement in a specific location for licensing. Licensees are placed in individual stands based on a variety of factors with their level of expertise and experience being the most important. At the present time, all locations are small with no more than one employee; however,

a cafeteria has been a part of the program before and may be again, and the criteria for management of such a facility differs, requiring a wider variety of skills. Even with the small stands, differing business volume requires differing levels of bookkeeping and inventory control skills.

Section (b) implements a temporary license for six months, a new practice. This allows the individual and the state agency to work together for a period of six months while the individual becomes familiar with operating the stand, and provides for close division cooperation and supervision to assist with any problems. Should the temporary licensee not work out, he/she can be terminated at the end of six months; however, with the same rights and grievance procedures. Again, difficulties expressed by vendors in the first six months have indicated that this is the best time to work with a vendor, and problems not resolved in this time usually do not become resolved at a later time but tend to increase.

Section (c) allows criteria to be developed for transfer and promotion to different facilities or facilities which create greater income. Current licensees have first option on a new location. In most situations the licensee with the most seniority will have first option. Other evaluative criteria becomes important when a licensee experienced problems in areas such as bookkeeping, inventory control, etc., which would be exacerbated by a promotion to a larger facility.

The program is currently too small to justify keeping an elaborate seniority list as sometimes occurs in larger states.

4 AAC 54.350. REIMBURSEMENT. (a) The division shall pay the personal moving costs at rates afforded division employees for a licensee entering a vending program for the first time when the vending facility to which he is assigned is at least 50 miles from his present home.

(b) A current licensee selected for a new facility or a former licensee requesting re-entry into a vending program must pay his personal moving costs. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

This has been standard practice throughout the vending stand program.

Register

EDUCATION

4 AAC 54.360

4 AAC 54.370

*after consulting w/ Vendor's Committee*

4 AAC 54.360. CONTINUING EDUCATION. The division will provide appropriate in-service training and post-employment services for licensees to expand and improve their capacity for upward mobility within the program. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

Section 1369.11 of the federal regulations addresses state agency responsibility to ensure that vendors reach their maximum vocational potential. Upward mobility within the program to increase earnings is an integral part of the program. It is seen as the state's responsibility to work with vendors to upgrade their vocational potential and hence their ability to move into larger income producing facilities.

4 AAC 54.370. RESPONSIBILITIES OF A LICENSEE. The responsibilities of a licensee include:

(1) operating the facility in accordance with laws relating to vending facilities, public health, taxes, compensation of employees, worker's compensation, insurance and civil rights; *fire code*

(2) maintaining business accounts and records separate from personal accounts;

(3) maintaining a commercial bank account in which all funds not required as cash on hand are deposited;

(4) making payment for all business expenses in a timely fashion;

(5) retaining receipts for goods and services bought for the business;

(6) submitting reports to the division as the division requires;

(7) obtaining and maintaining personal and property damage liability insurance, naming the State of Alaska as an additional insuree, with limits of \$100,000 for each person and \$300,000 for each occurrence, and insurance against loss by fire or other hazard of the vending facility property;

~~(8) maintaining high standards of personal appearance and conduct;~~

*st. not to fail*

*vague*

~~(9) maintaining the vending facility in clean and orderly condition. (Eff. / / , Reg. )~~

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENTS:

The obligations outlined here represent a combination of responsibilities found in the vendor agreement, in federal law and developed as a result of past agency experience. This section is very specific and does not deal in requirements which are vague and open to dispute, which makes it more readily understandable. These responsibilities will also assist each licensee in operating the facility in a legal and business-like manner. Past experience with this program has indicated that in every area listed, there have been problems. This specificity will provide the individuals in the program the guidelines they need and will also provide the regulative backing needed to appropriately manage the program.

4 AAC 54.380. VENDING FACILITY STAFFING. (a) .A vending facility operator shall personally operate the facility unless the division has assigned an assistant manager, a temporary relief manager or a substitute vacation manager to the vending facility.

(b) The vending facility operator must submit to the division a request for a temporary relief manager or substitute vacation manager as far in advance as is possible for the time for which the relief or substitute vacation manager is needed. Except for good cause, advance requests for substitute vacation managers must be submitted at least thirty (30) days before the proposed vacation. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

Section (a), is placed in the regulations because the purpose of this program is to provide direct employment to visually impaired and severely handicapped individuals. Once again, past experience has revealed this to be a problem with vendors at times hiring long term substitute managers without division knowledge or approval.

Section (b) requests advance notification for vacation managers so that vacation pay may be made available to the vendor in a timely fashion. It also allows time for the substitute manager to become familiar with the business.

4 AAC 54.390. ESTABLISHMENT OF VENDING FACILITY LOCATIONS. (a) In deciding to establish vending facility locations on federal property, in state buildings, and in private buildings where vending facilities are permitted by the owner, the division will apply the following criteria:

(1) The building in which the vending facility is to be located must either house at least 250 employees on a daily basis or evidence foot traffic through it of at least 400 persons daily;

(2) at least 250 square feet of floor space must be available for the vending facility;

(3) adequate utility outlets or hookups must be available; and

(4) a permit or authorization to establish a vending facility in the building must be obtainable. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
As 23.15.100(b)(6)

COMMENT:

Guidelines used here come from federal recommendations and are considered a minimum to ensure that a livable income will be earned. In addition, every effort is made to obtain marketing surveys aimed at determining potential income in a facility.

4 AAC 54.400. EQUIPMENT, FIXTURES, AND INITIAL STOCK. (a) The division will provide architectural services, equipment, fixtures, initial supplies and inventory, and initial operating funds, as it considers necessary, for each vending facility the division establishes in federal or state public buildings.

(b) All rights, title, and interest in the equipment, fixtures, initial inventory, and initial operating funds remain vested in the division.

(c) A licensee shall not acquire on his own or make additions to or reductions in equipment provided to the facility by the division without the prior written approval of the division. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(1)

COMMENT:

It should be noted that federal law allows for the possibility of vendor ownership of fixtures and equipment. In those situations the vendor purchases

the fixtures and equipment from the state agency and would then sell back the same fixtures and equipment when he leaves the vending stand. This is an option not taken by many state agencies. Upon consideration, it was felt with the small number of stands combined with the high turn over and movement within this program, that vested ownership by individual vendors would require more staff time and agency money than could be justified in selling and buying back equipment. (One facility alone has had three vendors in the past two years due to movement out of state and death). Since the state would maintain first option to purchase equipment, the vendor owner would not have the flexibility to sell the equipment as might be assumed.

A vendor may purchase his own equipment in addition to the equipment purchased by the state. In those instances, equipment is his/her and may be sold at the termination of the business.

4 AAC 54.410. REPAIR AND REPLACEMENT OF EQUIPMENT AND FIXTURES. (a) The division will maintain all vending equipment and will replace worn out or obsolete equipment as required. A licensee shall take reasonable care of equipment and give routine day-to-day maintenance of that equipment.

(b) the division will pay the entire cost of repair during:

(1) the first six months of operation of a facility (new licensee or new facility);

(2) the first three months of operation for equipment transferred from one facility to another; and

(3) the first thirty days for equipment in a facility to which a licensee has been transferred or promoted from another facility.

(c) After the lapse of time set forth in 4 AAC 54.410(b), the licensee shall pay the first \$50 of repair costs where the division has first authorized the repair. Unauthorized repairs are the sole responsibility of the licensee unless the repairs were necessary to avoid the loss of life or property.

↳ ? theft insurance?

(d) Vending facility operators are responsible for reporting, at the first opportunity, all incidents of damage, breakage, theft or malfunction of facility equipment or fixtures to the division. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

Surveys were taken of other state programs and found this repair and replacement schedule comparable to similar procedures in western states.

Section (c) gives the vendor responsibility to pay the first fifty dollars of repair cost. It is considered that these are small businesses operated by vendors in an independent fashion and that they should participate in the cost of operating the business.

4 AAC 54.420. TERMINATION OF BUSINESS. (a) A licensee who discontinues operation of a vending facility is responsible for the financial liabilities incurred in operating the facility. If the wholesale value of saleable merchandise, cash on hand and the facility account is greater than the value of the original inventory and cash provided the facility by the division, the division will reimburse the licensee for the excess, less any unpaid bills or other liabilities. If the wholesale value of saleable merchandise, cash on hand and the facility account is less than the value of the original inventory and cash provided the facility by the division, the licensee shall pay the division the balance.

(b) When a licensee discontinues operation of a vending facility, the licensee and the division shall conduct an inventory to ensure the equipment, fixtures, and initial inventory the division provided are accounted for an in operable condition. (Eff. / / , Reg. )

Authority AS 23.15.010(c)

COMMENT:

Section (b) was developed with input from the vendor committee to include the licensee in conducting the closing inventory. This results in the closing inventory being taken on a joint basis, which satisfies both the interest of the individual operator and the state agency, and assures that the inventory has been conducted in a responsible and accurate manner.

4 AAC 54.430. DISTRIBUTION AND USE OF VENDING MACHINE INCOME. (a) The net proceeds from vending machines operated by private persons in state or federal buildings for profit must be paid into the Small Business Enterprise Fund on a quarterly basis. Income derived from vending machines in federally owned or leased buildings will be held and accounted for separately from any income from vending machines in state owned or leased buildings and will be expended only to assist licensees on federal property.

(b) If a vending machine is in direct competition with a licensee in the same building, the net proceeds from the machine accrue to the licensee in an amount not to exceed the lesser of:

(1) the average net income of all licensees within the state, determined each fiscal year on the basis of the prior year's operation; or

(2) an amount equal to the average net income of all blind vending facility operators in the United States, determined on the basis of the prior year's operation.

(c) This section does not apply to income from a vending machine which is part of a vending facility operated by a licensee.

(d) The division will retain the net proceeds from vending machines not in direct competition with a licensed vending facility and net proceeds exceeding the requirements of 4 AAC 54.430(b). The division will use the proceeds to aid licensees for:

(1) vacation time, health insurance plans, retirement, and pension plans;

(2) maintenance of equipment;

(3) purchase of new or replacement equipment;

(4) management and consultative services;

(5) assuring a fair minimum return to beginning licensees; and

(6) defraying, in part or total, the cost of constructing new vending facilities.

(e) Use of the net proceeds committed by the division to benefits described in 4 AAC 54.430(d)(1) will be determined by a majority of licensees on a biennial basis. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(c)

COMMENT:

This entire section is in compliance with section 1369.8 of the federal law, with the state program also based on that section. The Division of General Services & Supply has worked with the Division of Vocational Rehabilitation to place contracts for vending machines in all state buildings. That money is maintained in a separate account and is used to provide all current benefits to vendors including annual leave for 15 days, health insurance and an IRA account. It is also used to purchase and repair equipment and for management and consultative services including training. These funds are also utilized for the development of new vending locations.

Section (e) discusses decisions concerning uses of these monies with vendors outlining priorities for expenditures from the Small Business Enterprise Fund. Monies from state buildings and federal buildings are kept in separate accounts because federal funds may not be commingled with state funds or used on state locations without affecting the state program, which by law allows severely handicapped as well as blind to participate.

Should federal funds be commingled with state funds, the vending stand program would then fall totally under the direction of federal law and therefore would require that all vendors be blind.

4 AAC 54.440. INCOME AND SET-ASIDE FUNDS. (a) the monthly income of a licensee is the net profit of the vending facility for the month.

(b) The division will augment the income of a licensee up to the state minimum wage when the licensee's income is below the state minimum wage and:

(1) the licensee has been licensed six months or less; or

(2) the vending facility has been in operation for six months or less.

(c) The division will establish a set-aside fund from the net profits of the vending facilities to carry out programs under 430 (d)(1) when revenues from (a) are insufficient only after majority vote of licensees.

(d) If the division establishes a set-aside fund, it will set forth in writing the assessment for each vending facility and, in the case of vending facilities on federal property, will submit the set-aside plan to the Commissioner of Rehabilitation Services for his review and approval as required under 34 CFR 395.3(a)(11)(IV).

(e) Set-aside revenues from vending facilities on federal property will be accounted for separately from those derived from vending facilities on state property, and will be expended in accordance with 4 AAC 54.430(e)(1) - (5) to assist only licensees on federal property. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

The authority for set-aside is based on section 1369.9 of the federal regulations. The federal regulations give the state licensing agency the authority to create a set-aside fund from the net proceeds of the operation of vending facilities for the purpose of management benefits, equipment repair and replacement so long as the committee of vendors participates.

Section (c) clearly outlines the requirement for a majority vote of vendors.

Section (e) once again accounts for separate accounting for set-aside revenues from state and federal property as was discussed above.

4 AAC 54.450. ACCESS TO PROGRAM AND FINANCIAL INFORMATION. The division will provide licensee access to all financial data respecting the vending programs and will prepare an annual financial report on the vending programs for distribution to licensees. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

This section on access to program and financial information was added to be in compliance with federal regulations 1369.12 and in response to vendor request. All licensees are provided with program and financial information on an annual basis.

4 AAC 54.460. REVOCATION OF LICENSES. (a) A license is issued for an indefinite period of time but may be suspended or revoked after affording the licensee an opportunity for a hearing under 4 AAC 54 for the following reasons:

(1) In the case of facilities on federal property, the licensee experiences an improvement of vision so that the licensee is no longer blind, or, in the case of facilities operated on state property, the licensee experiences an improvement in the disabling condition so that the licensee is no longer blind or severely disabled;

(2) prolonged absences without approval from the division;

(3) extended illness (exceeding three months) with a documented medical diagnosis of prolonged incapacity to operate the vending facility in a manner consistent with the needs of the location, or other available locations in the vending facility program. This period may be extended by the director if adequate coverage of the facility can be arranged;

(4) a request by the management of the building in which the vending facility is located that the operator be moved for failure to comply with applicable building rules;

(5) operating the facility in a manner which endangers the division's investment in the facility;

(6) failure to pay a government agency, supplier, or creditor of any taxes or other amounts of money due;

(7) refusal to cooperate with the division or to abide by the terms of the written operating agreement;

(8) demonstrated incompetency in the operation of a vending facility;

(9) submitting inaccurate or false reports on expenditures and income to the division; or

(10) failure to comply with the provisions of this chapter or with applicable health codes.

(b) Before taking action to revoke a license, the division may permit a licensee to continue operating the facility for a probationary period of up to six months to take corrective measures. (Eff. / / , Reg. )

Authority AS 23.15.010(c)  
AS 23.15.100(b)(6)

COMMENT:

Section (a)(1) once again follows federal guidelines for federal property and deals with the improvement of a handicapping condition to the point that the individual no longer meets the criteria.

Section (a)(2-10) deals with specific problems the individual licensee experiences or has in the management of the facility which endanger the continuing success of that facility. There have been several specific instances of these violations which let to the development of these criteria for revocation, specifically (a)(2),(4),(5),(6), and (8).

Section (b) increases the probationary period from 3 to 6 months again due to experience, when an individual was not able to implement all the necessary corrective measures in a period of only 3 months. In those situations where an individual is sincere in their desire to succeed, but has difficulty in several areas of management at the same time, it is the intent to give that person maximum time available to implement the necessary change.

4 AAC 54.470. ADMINISTRATIVE REVIEW. An administrative review is the procedure through which a licensee or his representative may seek review of an adverse division action arising from the administration of the vending facility program. The following procedures apply in the conduct of an administrative review.

(1) At the time of licensing, the division will inform the licensee in writing of his right to seek administrative review of adverse actions and the procedures to be followed in obtaining one.

(2) A licensee or his designee must request an administrative review within fifteen (15) working days of the action with which he is aggrieved.

(3) A written request for an administrative review stating the issues to be resolved must be transmitted to the director of the division personally or by certified mail with return receipt requested.

(4) The division will assign a member of its administrative staff who has not in any way participated in the agency action in question as review officer.

(5) The division shall conduct the review within fifteen (15) working days of the receipt by the division of the written request of the licensee. The division shall hold the review in the division office nearest the licensee during regular agency hours at a time convenient to the licensee.

(6) The division shall provide transportation and reader or other communication services to the vending facility operator when necessary.

(7) A record of the administrative review will be maintained for two years.

(8) When an informal administrative review does not resolve a dispute to the satisfaction of the licensee, the licensee may request an evidentiary hearing. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

COMMENT:

This section is based on federal regulation and standard division procedure for administrative review. Individuals in either the state or federal program have access to the same procedures.

4 AAC 54.480. EVIDENTIARY HEARING. The following procedures apply in the conduct of an evidentiary hearing:

(1) A licensee, or his designee, must request an evidentiary hearing within fifteen (15) working days of any administrative review decision he wishes to appeal;

(2) A written request for an evidentiary hearing stating the issues to be appealed must be transmitted to the director of the division personally or by certified mail with return receipt requested;

(3) A licensee may retain legal counsel or other representation at his own expense in an evidentiary hearing;

(4) The division will schedule the hearing within fifteen (15) working days of its receipt of the written request unless the division and the licensee agree in writing to another time. The division will hold the hearing in the division office nearest the vendor during regular agency hours at a time convenient to the licensee;

(5) The division will notify the licensee in writing of the time and place fixed for the hearing;

(6) The division will provide the licensee a copy of his case file at no charge;

(7) The division will provide transportation and reader or other communication services to the licensee if necessary;

(8) The hearing officer shall be an impartial official who has no involvement with the state agency action at issue or with the administration of the vending facility program. The hearing officer may be staff member of another agency or a state agency hearing officer;

(9) The licensee and the division may present oral or documentary evidence, submit rebuttal evidence, and conduct examination and cross examination of witnesses; *under oath*

(10) All papers and documents to be introduced into evidence at the hearing must be filed with the hearing officer and provided to the other party.

(11) A transcript may be made of the oral evidence at the discretion of the division. The division will pay all transcript costs and will provide the licensee with one copy of the transcript.

(12) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for the decision.

(13) The decision of the hearing officer shall set forth findings of fact and conclusions with respect to each of the issues. The decision shall be made within fifteen (15) working days of the hearing. The decision shall be mailed promptly to the vending facility operator and the division by certified mail return receipt requested.

(14) A licensee in the federal vending program who is dissatisfied with the decision rendered after an evidentiary hearing may request an Arbitration Panel be convened by filing a complaint with the Secretary for the Department of Education under 34 CFR 295.13(a) within fifteen (15) working days of his receipt of the decision. A licensee in the state vending program may exercise his right to appeal under the Alaska Rules of Appellate Procedure. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

*notify of appeal rights*

COMMENT:

Again, this section is based on federal regulation with separate procedures being made available to a blind or severely handicapped individual in the state program. The Rehabilitation Services Administration has advised the state agency that a blind individual on state property is not considered to be a member of the federal Randolph-Sheppard program and therefore, does not have access to federal arbitration.