IDAPA 15 – OFFICE OF THE GOVERNOR

IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

15.02.30 – Business Enterprise Program

Who does this rule apply to?
All individuals who apply for and are licensed vendors in the Business Enterprise Program.

What is the purpose of this rule?
This rule governs the administration of the Business Enterprise program.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statute passed by the Idaho Legislature:

State Government and State Affairs -
Commission for the Blind and Visually Impaired:

- Section 67-5407, Idaho Code - Duties
- Section 67-5411 Idaho Code - Commission as Sole Licensing Agency Under the Provisions of the Randolph-Sheppard Vending Stand Act

Who do I contact for more information on this rule?

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000. LEGAL AUTHORITY.
The Idaho Legislature has designated the Commission for the Blind and Visually Impaired as the sole licensing agency under the provisions of the Randolph-Sheppard vending stand act pursuant to Section 67-5411, Idaho Code, and has given to the Board of the Idaho Commission for the Blind and Visually Impaired the legislative power to promulgate rules by the provisions of Section 67-5407(e), Idaho Code. (3-15-02)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 15.02.30, "Business Enterprise Program." (3-15-02)

02. Scope. These rules specify the conditions and standards under which the Business Enterprise Program facilities are operated. (3-15-02)

002. -- 009. (RESERVED)

010. DEFINITIONS.
Unless otherwise indicated in these rules, terms below are defined as follows: (3-1-93)

01. Administrator. The Administrator of the Commission. (3-15-02)

02. Agreement. An agreement between the Program and an operator for the operation of a vending facility as a primary location. (3-15-02)

03. Benefits. Retirement or pension plans, health insurance contributions, and paid sick and vacation leave available only to operators. (See 34 CFR 395.8.) (3-15-02)

04. Blind Person. A person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person selects, has been determined to have the following (see 34 CFR 395.1(c)): (3-15-02)

a. Not more than twenty/two hundred (20/200) central visual acuity in the better eye with correcting lenses; or (3-15-02)

b. An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty (20) degrees. (3-15-02)

05. Certified. Having successfully completed the Commission-approved training program established by the Program as a requirement for licensing. (See Section 150 of these rules.) (3-15-02)

06. Commission. The Idaho Commission for the Blind and Visually Impaired. (3-15-02)

07. Committee. The Idaho Blind Merchants Committee (IBMC). (3-15-02)

08. Contract. A contract with a licensee or other qualified individual for the operation of a vending facility. Contracts are of limited duration. (3-15-02)

09. Contract Facility. A facility operated under a contract by a licensee or other party. (3-15-02)

10. Facility. A vending enterprise defined as: (3-15-02)

a. 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, 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 a state within such a state. (See 34 CFR 395.1(x)); or (3-15-02)

b. Restaurants, cafeterias, snack bars, and goods and services customarily offered in connection with any of the foregoing, and includes vending machines dispensing foods when operated independently or in conjunction with such facilities. (See Section 67-6903, Idaho Code); or (3-15-02)

c. Any type of business which the Supervisor finds is consistent with and furthers the policies, goals, and objectives of the Program. (3-15-02)

11. **License**. A written instrument issued by the state licensing agency to a blind person, authorizing such person to operate a vending facility on federal or other property. (See 34 CFR 395.1(i).) (3-15-02)

12. **Licensee**. A blind person licensed by the state licensing agency to operate a vending facility on federal or other property. (See 34 CFR 395.1(b).) (3-15-02)

13. **Operator**. A licensee assigned to and operating a primary location. (3-15-02)

14. **Permit**. The official approval given a state licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of federal property, or person in control of other property, whereby the state licensing agency is authorized to establish a vending facility. (See 34 CFR 395.1(o).) (3-15-02)

15. **Primary Location**. A single building or group of buildings operated as a vending facility pursuant to an agreement. (3-15-02)

16. **Probation**. A conditional status wherein a vendor has a specified period of time to correct identified problems before an agreement or contract may be terminated. (3-15-02)

17. **Program**. The Business Enterprise Program (BEP), provided for by the Randolph-Sheppard Act to give priority to the blind in need of economic opportunities. (See 34 CFR 395.1(p) and Title 67, Chapter 69, Idaho Code.) (3-15-02)

18. **Property Manager**. The individual or entity in charge of administering vending contracts or permits in federal, state, or local government buildings or private buildings. (3-15-02)

19. **Satellite**. An ancillary site separate from a primary location granted to an operator as part of an agreement. (3-15-02)

20. **Set Aside Funds**. Funds which accrue to a state licensing agency from an assessment against the net proceeds of each vending facility in the state's vending facility program and any income from vending machines on federal property which accrues to the state licensing agency. (See 34 CFR 395.1(s).) (3-15-02)

21. **State Licensing Agency**. The Commission which has been designated by the Secretary of Education to issue licenses to blind persons for the operation of vending facilities on federal and other property. (See 34 CFR. 395.1(v).) (3-15-02)

22. **Supervisor**. The BEP individual who administers the Program. (3-15-02)

23. **Suspension**. Temporary withdrawal by the Supervisor of privileges granted by a license, agreement or contract during which time a vendor may not continue to operate a facility. (3-15-02)

24. **Vendor**. A licensee who operates a primary location with or without satellites, pursuant to an agreement, or who operates a contract facility pursuant to a contract. (3-15-02)

011. PURPOSE.

The purpose of the Program is to provide remunerative employment opportunities for blind individuals who have an interest in and aptitude for operating a facility, to demonstrate alternative techniques for coping with blindness, and to educate the public regarding the ability of blind individuals to independently operate businesses. The Supervisor is responsible for the administration of the Program and reports to the Administrator. The Program shall be coordinated with other vocational rehabilitation programs of the Commission. (3-15-02)

012. -- 029. (RESERVED)

030. LICENSES.

01. Issuance of Licenses. Licenses shall be issued for an indefinite period of time and shall be issued only to persons who are determined by the Program to be: (3-15-02)

a. Blind, as defined in Subsection 010.04 of these rules; and (3-15-02)

b. Citizens of the United States; and (3-15-02)

c. Certified by the Program as qualified and trained to operate a facility. (3-15-02)

02. Inactive License. If a licensee, who is not an operator, fails for more than one (1) year to bid for a facility, the license of such licensee shall become inactive. (3-15-02)

03. Reactivation. A license can be reactivated upon written request to the Supervisor. The Supervisor may require a licensee to repeat the certification requirements to reactivate a license. (3-15-02)

031. -- 039. (RESERVED)

040. TERMINATION AND SUSPENSION OF LICENSES.

01. Grounds for Termination. Licenses are subject to termination after fifteen (15) days' notice if the Program finds: (3-15-02)

a. That the facility is not being operated in accordance with Commission rules, the terms and conditions governing the permit, or the terms and conditions of the agreement or contract (See Section 140 of these rules.); (3-15-02)

b. That the licensee no longer meets the definition of blind person as set out in Subsection 010.04 of these rules; (3-15-02)

c. That the licensee has received a medically documented diagnosis that will result in prolonged incapacity of the licensee and a continuing inability to operate a facility; (3-15-02)

d. That the licensee has withdrawn from the Program by submitting written notification to the Supervisor; (3-15-02)

e. That the licensee has made unauthorized use of retirement account funds; or (3-15-02)

f. That the licensee engages in conduct or allows a condition to exist for which the licensee has previously been placed on probation, or which has previously led to the suspension of the license. (3-15-02)

02. Notice of Termination. Notice shall be in writing, specify the grounds upon which the notice of termination is based; and advise the operator of his right to administrative review and a full evidentiary hearing. (3-15-02)

03. Request for Review Not a Stay. A timely filed request for administrative review shall not stay the termination of the license. (3-15-02)

04. Termination. The termination becomes effective following the fifteen (15) day notice period unless the vendor seeks administrative review, in which case the license may be suspended and any contract or agreement may be terminated pending completion of the administrative review, full evidentiary hearing, and subsequent appeals. Until the review process has been concluded, the Program shall operate the facility. At the conclusion of the review process, should the vendor prevail, the Program shall restore all rights and benefits to the vendor including compensation for the period of termination calculated at a weekly rate determined by averaging the net income for the facility for the prior federal fiscal year. (3-15-02)

05. **Suspension**. The Supervisor has the authority to suspend the license of a vendor whose conduct may jeopardize a permit or the Program. (3-15-02)

a. The Supervisor shall notify the vendor in writing of the suspension and identify the specific deficiencies and the time allowed for the vendor to take corrective action. If no resolution has been made at the end of the specified time, the Supervisor shall issue a notice of termination. (3-15-02)

b. If the Supervisor and a vendor, whose license has been suspended, cannot agree on arrangements for a temporary replacement vendor, the procedures set out in Section 180 of these rules shall be followed to resolve the matter. (3-15-02)

06. **Probation**. The Supervisor has the authority to place a vendor who is not in compliance with the terms of an agreement or contract on probation. The Supervisor shall notify the vendor in writing of the probation and identify the specific deficiencies and the time allowed for the vendor to take corrective action. If no resolution has been made at the end of the specified time, the Supervisor shall issue a notice of termination. (3-15-02)

07. **Improvement Plans**. If the Supervisor receives a set aside report from a vendor that indicates no profit has been realized during two (2) consecutive months or three (3) months in a fiscal year the Supervisor shall review the situation and, with the vendor, devise a plan with measurable objectives and timetables for improvement. Should the facility not show a reasonable profit during the three (3) subsequent months the Supervisor may issue a notice of termination or the facility may be contracted or closed. (3-1-93)

041. -- 049. (RESERVED)

050. SELECTION OF OPERATORS.

01. **Notification of Opening**. The Supervisor shall notify all licensees and prospective operators, all commissioners and counselors of the Commission of all facility openings in writing. The notice of openings shall also be posted on the Commission web site. The notice shall state the facility location, the application procedure, and the deadline for application. The notice shall also solicit interest in operating the facility on a contract, in the event it is not awarded as a primary location. Interested parties will be provided specific information about the openings upon request. (3-15-02)

02. **Qualification of Bidders**. A bidder for a primary location shall be: (3-15-02)

a. Licensed by the Commission; (3-1-93)

b. Current with Program payments, including monthly set asides and any other monies due the Program; and (3-15-02)

c. In good standing and not have been placed on probation or had his license suspended within the last calendar year. (3-15-02)

03. **No Qualified Bidders**. If no applications are received from qualified bidders' licensees who expressed an interest in operating the facility as a contract facility will be given priority in the selection of a contractor. If no licensee is awarded the facility, the Supervisor may award a contract to any qualified individual. (3-15-02)

04. **Application**. An application shall be in the form of a written letter to the Supervisor and include a statement of qualifications and pertinent experience. (3-15-02)

05. **Selection Process**. (3-1-93)

a. The Supervisor shall appoint a panel to review all applications and conduct interviews. (3-15-02)

b. The panel shall consist of the Supervisor who serves as chair, a representative of the Committee

selected by the Committee chair, and one (1) person from field services. The person from field services shall not have had a client relationship with the applicants. (3-15-02)

c. The panel shall review all written applications and interview at least the top five (5) candidates, using the same format and interview questions. All members of the panel must be physically present during the interviews. (3-15-02)

d. A weighted evaluation form shall be used by each panel member. Selection criteria shall be consistent with the job requirements of that facility. Points shall be given by each interviewer to each candidate in the various categories assessed. A composite score shall be tabulated for each candidate. (3-15-02)

e. The Supervisor shall make a final selection from the two (2) candidates with the highest total points. If the candidate with the highest score is not selected, the Supervisor must provide an explanation in writing to the highest scoring candidate upon request. (3-15-02)

f. If no bidder is awarded operation of the facility, the Supervisor may grant it on a contract to a licensee or other qualified individual. (3-15-02)

06. Notification of Decision. The Supervisor shall notify all applicants in writing of the final decision. (3-1-93)

07. Records. The Supervisor shall maintain a record of all proceedings. (3-1-93)

08. Transfer and Promotion. The procedure for transfer and promotion shall be the same as for original selection of vendors. (3-15-02)

051. -- 059. (RESERVED)

060. ACCESS TO PROGRAM AND FINANCIAL INFORMATION.
Each licensee in the Program shall be provided access to all Program financial data relevant to the operation of the Program, including annual financial reports, provided that such disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information. Insofar as practical, such data shall be made available in suitable alternative format. At the request of a licensee, qualified staff of the Program shall arrange a convenient time to assist in the interpretation of the financial data. (3-15-02)

061. -- 069. (RESERVED)

070. EQUIPMENT, INITIAL STOCK AND BUSINESS EXPENSES.

01. Program Responsibility. The Program assumes full responsibility for providing each facility established under the Program with adequate equipment and initial stock of merchandise. (3-15-02)

02. Initial Stock of Merchandise. An initial stock of merchandise shall be provided by the Supervisor. The Supervisor shall determine the quantity of the initial stock, which shall be enough for at least one (1) full week of operation. The vendor shall account for the value of the initial stock when the operation is concluded. (3-15-02)

03. Vending Machine Contracts. The Program shall negotiate contracts with vending companies for installation or location of vending machines in or to be assigned to facilities. (3-15-02)

04. Insurance. All vendors shall be responsible for obtaining general liability, product liability, and worker's compensation insurance. Proof of insurance must be sent to the Supervisor prior to the start of operation and within ten (10) days of policy renewal date. (3-15-02)

071. MAINTENANCE AND REPLACEMENT OF EQUIPMENT.
The Program shall maintain or cause to be maintained all equipment in a safe and satisfactory working condition. Replacement in lieu of repair shall be a decision of the Supervisor. It is the vendor's responsibility to report any incident resulting in damage, breakage, theft, defacement, or malfunction of equipment or fixtures as soon as

possible. Vendors are authorized to arrange for minor repairs or replacement of small equipment where the total cost does not exceed three hundred dollars ($300). Repair shall be deemed unauthorized when the repair or replacement is attributable to negligent actions by the vendor or when the equipment or fixtures are not the maintenance responsibility of the Program. (3-15-02)

072. OPERATOR OWNERSHIP OF VENDING FACILITIES.
The Commission does not vest title to equipment and stock in an operator. (3-1-93)

073. -- 099. (RESERVED)

100. SETTING ASIDE OF FUNDS.

01. Set Aside. The Commission may set aside, or cause to be set aside, from the net profit of the operation of facilities, funds for the purposes of maintenance and replacement and purchase of equipment. (3-1-93)

02. Other Purposes Allowed by the Randolph-Sheppard Act. The Commission reserves the right to use set aside funds for other purposes as permitted in accordance with the provisions of the Randolph-Sheppard Act and federal rules and regulations. (3-1-93)

03. Approval by the United States Department of Education. The funds set aside for those specified purposes shall not exceed the amount determined reasonable by the Rehabilitation Services Administration Commissioner, U.S. Department of Education. (3-1-93)

04. Record of Expenditures. The charge for each of the program purposes cited shall be determined on the basis of records of expenditures made for each of these purposes over a reasonable period of time with allowances for improving services, fluctuations in costs and program expansion. Adequate records shall be maintained to support the charges for each of the purposes cited. (3-1-93)

05. Increases. At no time shall the set aside charges be increased without prior consultation with the Committee. (3-1-93)

06. Review of Schedule of Funds. The schedule of funds to be set aside shall be reviewed periodically by the Supervisor and the Committee. After reviewing the accounting records and other criteria pertinent to the administration of the Program, it may be necessary to revise the set aside payment schedule. (3-1-93)

07. Income with No Program Operator. Vending machine income received from federal sites where there is no licensed Program operator shall be used for those purposes designated by the Committee in accordance with 34 CFR 395.8. (3-1-93)

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

01. Limitations. No limitation shall be imposed on income from vending machines combined to create a facility when such facility is maintained, serviced or operated by a program vendor. (3-15-02)

02. Vending Machine Income. The Program shall manage vending machine income disbursed by a property managing department, agency or instrumentality of the United States in accordance with the requirements of 34 CFR 395.8. (3-15-02)

102. -- 119. (RESERVED)

120. OPERATOR BENEFITS.

01. Vending Machine Income. The Program shall provide licensees with information regarding benefits. Upon a majority vote of licensees, the Program may retain vending machine income from federal property in accordance with 34 CFR 395.8(a). Such income may be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for

operators. Distribution of benefit payments shall be determined by a majority vote of licensees and established as policy. (3-15-02)

02. Eligibility. Only operators of a primary location pursuant to an agreement shall be eligible to receive benefits. There shall be a ninety (90) day waiting period before a new operator is eligible to receive benefits. Benefit payments will not be interrupted when an operator transfers from one primary location to another. Benefits shall be paid only after the appropriate documentation is submitted to the Program. (3-15-02)

03. Medical Insurance. If a majority of licensees determines that operators shall be reimbursed for medical insurance premiums, operators shall be responsible for acquiring their own policies. The Program shall reimburse the operator in an amount determined by the vote of licensees. Operators shall provide documentation to the Program proving payment of their premiums, prior to any reimbursement. (3-15-02)

04. Retirement and Pension Accounts. If a majority vote of licensees determines that operators shall have retirement accounts, the Program shall deposit into approved retirement accounts an amount determined by a majority vote of licensees, up to the maximum federal allowance for IRAs per year. The funds shall be deposited on a monthly basis directly into each operator's retirement account. (3-20-04)

05. Sick Leave and Vacation Funds. If a majority vote of licensees determines that operators shall have sick or vacation leave funds, or both, the Program shall remit to each operator an amount determined by a majority vote of licensees. (3-15-02)

06. Non-Fully Funded Benefits. If funds are not available for full payment of benefits, as voted by the licensees, the Program may pro-rate the payments from available funds, unless another method of disbursement of non-fully funded benefits was voted by a majority of the licensees. (3-15-02)

121. -- 129. (RESERVED)

130. AGREEMENTS/CONTRACTS.

Vendors shall enter into an agreement or a contract with the Program that specifies the rights and responsibilities of the operator and Program as they relate to the operation of a primary location and any satellites. The contract shall specify the rights and responsibilities of the licensee or qualified operator and Program as they relate to the operation of a contract facility. (3-15-02)

01. Program Responsibilities. The Program shall: (3-15-02)

a. Equip the facility for carrying out the business authorized by the permit; (3-15-02)

b. Furnish initial stocks of merchandise sufficient to enable the vendor to commence operating the business. The Program shall also furnish the vendor with an inventory list of all equipment and initial stock; (3-15-02)

c. Provide for the maintenance of the equipment and replace obsolete and worn out equipment as necessary; (3-15-02)

d. Provide, or provide for supervisory and management services as deemed appropriate by the Supervisor for efficient operation; (3-15-02)

e. Periodically audit, or cause to be audited, the vendor's records and financial data to verify the accuracy of the set aside report; and (3-15-02)

f. Provide information or make available data in suitable format at the vendor's request when possible. (3-15-02)

02. Vendor Responsibilities. The vendor shall: (3-15-02)

a. Have the facility open for business as specified in the permit. Exceptions may be approved in

advance by the Supervisor; (3-15-02)

b. Operate on a cash basis. The Program shall not be responsible for bills incurred by the vendor. The vendor is responsible for notifying suppliers that the vendor alone is responsible and shall verify that notification by use of the purveyor letter supplied by the Program; (3-15-02)

c. Be accountable to the Program for the income of the facility; (3-15-02)

d. Provide for a temporary worker in the vendor's absence because of illness, vacation, or other causes. The salary of the person who substitutes for the vendor, or that of other emergency help, shall be paid for by the vendor. The vendor shall notify the Program a reasonable time in advance of taking any voluntary leave, and as soon as possible with respect to any involuntary leave; (3-15-02)

e. Carry on the business of the facility in compliance with the permit and applicable health laws and regulations and make available to the Program copies of inspection reports; (3-15-02)

f. Maintain a neat, business-like appearance while working at the facility, and conduct business in an orderly, professional manner; (3-15-02)

g. Take proper care of the equipment and not make structural alterations or changes to the facility without written approval of the Program; (3-15-02)

h. Keep appropriate records and send a monthly report and set aside payment to the Program by the fifteenth day of the following month as required. Late reports or payments will be resolved in the manner set forth in Section 040 of these rules; (3-15-02)

i. Be responsible for the day to day management of the facility. For staffed facilities, the vendor should be present the majority of the time the facility is staffed for service to the public. For vending only facilities, the Supervisor and vendor will mutually agree on the hours that the vendor shall be at the facility, and the agreement shall become an addendum to the contract or operating agreement; and (3-15-02)

j. The vendor shall provide copies of proof of insurance as required by Subsection 070.04 of these rules. (3-15-02)

03. General Rights and Responsibilities. (3-1-93)

a. The business to be conducted shall be limited to that specified and authorized in the permit or contract between property managing agency and the Program. (3-15-02)

b. The right, title to, and interest in the equipment and initial inventories of the facility are vested in the Program. At termination of the operating agreement, a value equal to that assigned to the outgoing vendor as beginning inventory will be returned to the Program. The Program will determine what inventory will be accepted from the outgoing vendor. The outgoing vendor shall have receipts no more than ninety (90) days old to show the value of inventory. Any inventory refused by the Program will become the property of the outgoing vendor. If the takeover inventory is less than initially assigned, the outgoing vendor will pay the difference in cash. If the Program agrees to accept more inventory than was initially assigned, the Program will reimburse the outgoing vendor in cash. (3-15-02)

c. The monthly income of the vendor shall be the net profit for the period in question; the expenses shall be in accordance with the monthly set aside report as developed by the Program and the Committee. (3-15-02)

d. Rebates, commissions, or bonuses received by the vendor from suppliers shall be reported as income. Such income is not to be treated as the separate, personal income of the vendor. (3-15-02)

e. Merchandise taken from the stock in trade of the facility by the vendor for personal use shall be paid for at cost. (3-15-02)

f. The business and premises shall be covered by adequate comprehensive and product liability insurance, and any such other insurance as will protect the vendor and anyone employed by the vendor against losses and claims arising out of the conduct of the business or which are required by law. The dollar amount of insurance shall be fixed by the Program and the Committee using industry standards and state requirements as guidelines to assure up-to-date coverage. The cost of such insurance shall be a cost of operating the business of the facility and taken into account as such in determining the net proceeds of the business operation. (3-15-02)

g. After an initial commitment to operate a primary location for twelve (12) months, an agreement may be terminated at anytime by the operator with at least thirty (30) days written notice to the Program. During the initial twelve (12) month period, the operator cannot bid on other primary locations without the consent of the Supervisor. (3-15-02)

h. The operator is encouraged to hire blind persons or persons with other disabilities when feasible. (3-15-02)

i. The vendor shall report promptly to the Supervisor any unresolved complaints of the property manager. (3-15-02)

j. The vendor may, with written approval of the Supervisor, negotiate with property managers for additional facilities. (3-15-02)

k. A vendor may purchase equipment for a facility only if the purchase is approved in advance, in writing, by the Supervisor. The Program, in its sole discretion, has the first option to purchase from the vendor any equipment purchased without advance, written approval. (3-15-02)

131. -- 139. (RESERVED)

140. TERMINATION AND SUSPENSION OF AGREEMENTS/CONTRACTS.

01. Grounds for Termination. Agreements and contracts may be terminated if: (3-15-02)

a. The vendor is not operating the facility on a cash basis; (3-15-02)

b. The health and safety of the vendor, the employees, or the customers are jeopardized; (3-15-02)

c. The set aside report indicates the vendor did not show an average one thousand dollar ($1,000) net profit per month, after set aside payment, for the prior federal fiscal year; (3-15-02)

d. The vendor jeopardizes the state's investment in the facility by violating the terms of the permit, agreement or contract, or by placing the facility in danger of being closed; (3-15-02)

e. The business and premises of the facility are not covered by adequate insurance; (3-15-02)

f. The facility is not being operated in accordance with the agreement, contract, Commission rules, or with applicable federal, state, or local laws, rules, and regulations; (3-15-02)

02. Notice of Termination. The notice shall be in writing and specify the grounds upon which the notice of termination is based and advise the vendor of his right to administrative review and a full evidentiary hearing. (3-15-02)

03. Request for Review Not a Stay. A timely filed request for administrative review shall not stay the termination of an agreement or contract. (3-15-02)

04. Review. The termination becomes effective following the fifteen (15) day notice period unless the vendor seeks administrative review, in which case the License may be suspended and any contract or agreement may be terminated pending completion of the administrative review, full evidentiary hearing, and subsequent appeals. Until the review process has been concluded, the Program shall operate the facility. At the conclusion of the review

process, should the vendor prevail, the Program shall restore all rights and benefits to the vendor including compensation for the period of termination calculated at a weekly rate determined by averaging the net income for the facility for the eight (8) weeks prior to the notice of termination. (3-15-02)

05. Grounds for Suspension. Agreements and contracts may be suspended if: (3-15-02)

a. The vendor has committed any of the acts enumerated in Subsection 140.01 of these rules; or (3-15-02)

b. The property manager requests the removal of the vendor and documents the request in writing, and the Program determines that immediate removal of the vendor is in the best interest of the Program; or (3-15-02)

c. The Supervisor and the vendor cannot agree on a plan to resolve violations and improve performance. (3-15-02)

06. Notice of Suspension. A written notice of suspension shall be delivered to the vendor and shall state the reason for the suspension. Suspension may continue up to sixty (60) days. If the vendor seeks administrative review of the suspension, the suspension shall continue until the administrative review, evidentiary hearing, and subsequent proceedings have concluded. During the suspension, the facility shall be operated by the Program. At the conclusion of the review process, should the vendor prevail, the Program shall restore all rights and benefits to the vendor including compensation for the period of termination calculated at a weekly rate determined by averaging the net income for the facility for the eight (8) weeks prior to the notice of termination. (3-15-02)

07. Cancellation. An agreement or contract may be cancelled by the Program at any time should the facility cease to be a vending facility by revocation of the permit by the property manager. Cancellation under this Subsection shall not affect licensure and does not give rise to a right to administrative review, evidentiary hearing or other relief. (3-15-02)

141. -- 149. (RESERVED)

150. TRAINING PROGRAM.

01. Certification. Prior to certification, an applicant shall satisfactorily complete the training program established by the Program and any on-the-job training prescribed by the Supervisor. The training program shall have certain basic requirements but also be customized to meet the needs of each individual applicant. The training program shall include, but is not limited to: fundamentals of purchasing, inventory control, pricing, record keeping and other accounting systems; display and arrangement of merchandise and equipment; and public relations and promotion. (3-1-93)

02. In-Service Training. The Program shall provide each vendor with regular and systematic assistance and in-service training to: promote maximum returns to the vendor; maximum service to the clientele; maintenance of a clean and attractive place of business; utilization of sound business practices; and adherence to the Commission's rules, policies, and building management requirements. (3-15-02)

03. Post-Employment Services. Post-employment services may be provided to eligible vendors when necessary to assure that they maintain suitable employment within the agency's Business Enterprise Program. Eligibility for and provision of post-employment services shall be in accordance with IDAPA 15.02.02, "Vocational Rehabilitation Services." (3-15-02)

151. -- 159. (RESERVED)

160. IDAHO BLIND MERCHANT'S COMMITTEE.

01. Committee Name. The Program shall provide for a state committee of blind vendors per the Randolph-Sheppard Act (See 34 CFR 395.14.) The name of this committee is the Idaho Blind Merchants Committee (IBMC). (3-15-02)

02. **Purpose of Committee**. The purpose of the Committee is to: (3-15-02)

a. Actively participate with the Commission in major administrative decisions and policy and program development decisions affecting the overall administration of the Program; (3-15-02)

b. Receive and transmit to the Commission grievances at the request of vendors and serve as advocates for such vendors in connection with such grievances; (3-15-02)

c. Actively participate with the Commission in the development and administration of a system for the transfer and promotion of vendors; (3-15-02)

d. Actively participate with the Commission in the development of training and retraining programs for vendors; and (3-15-02)

e. Sponsor, with the assistance of the Commission, meetings and instructional conferences for vendors within the state. (3-15-02)

03. **Bylaws**. The Committee shall, by a two-thirds (2/3) majority vote, adopt bylaws, consistent with the Randolph-Sheppard Act, which govern the internal operation of the Committee. (3-15-02)

04. **Committee Membership**. The Committee comprises the operators of all facilities in the state. (3-15-02)

05. **Executive Board**. An executive board consisting of a chair, vice chair, secretary, and two (2) at large representatives shall be elected by the Committee at a regular meeting. Members of the executive board shall serve for two (2) years in their respective positions. The executive board may conduct all business of the Committee between regular meetings of the Committee. (3-15-02)

161. -- 169. **(RESERVED)**

170. **MEETINGS OF THE COMMITTEE.**

01. **Annual Meetings**. The Committee shall hold at least one (1) regular meeting each calendar year. (3-15-02)

02. **Additional Meetings**. The Committee may provide for additional meetings in its bylaws. (3-15-02)

03. **Program Responsibilities**. The Program shall work with the Committee chair or designated representative to coordinate the regular meetings of the Committee. At regular meetings, the Program shall give financial and overview reports, review Program rules and policies; and receive Committee recommendations for changes to the Program rules or polices. (3-15-02)

04. **Expenses**. Allowable expenses of not more than two (2) regular meetings per calendar year may be paid out of Program monies. Allowable expenses include meeting rooms, lodging, per diem, and transportation. The transportation arrangements shall be determined by the Supervisor. Expenses for additional meetings of the Committee may be paid by the Program at the discretion of the Supervisor after consultation with the Administrator. (3-15-02)

05. **Future Meeting**. The date and time for the next regular meeting shall be set prior to adjournment. (3-15-02)

06. **Minutes**. Minutes shall be kept by the Committee and made available to the Supervisor. Minutes shall be sent to each operator and to the Supervisor within ninety (90) days after conclusion of the meeting. The Program shall pay all reasonable costs for this service. (3-15-02)

171. -- 179. **(RESERVED)**

180. ADMINISTRATIVE REVIEW.

01. Request for Review. A vendor who is aggrieved by any action or failure to act arising from the operation or administration of the Program may ask for a review of the action by filing a written request with the Administrator. The written request for review, which may be filed by the vendor or a designated representative of the vendor, shall specify the matter to be reviewed and how the vendor has been aggrieved. (3-15-02)

02. Response. Upon receipt of a request for administrative review, the Administrator shall notify the Supervisor, who has fifteen (15) calendar days to file a written response to the request. A copy of the Supervisor's response shall be sent to the vendor or the vendor's designated representative. (3-15-02)

03. Filing Objections, Replies, and Decisions. Upon receipt of the response from the Supervisor, the vendor or the vendor's designated representative has fifteen (15) calendar days in which to file any objections or make reply, after which time the Administrator shall, in good faith, evaluate the materials submitted and issue a written decision within fifteen (15) calendar days. The vendor or the vendor's designated representative may request an evidentiary hearing in accordance with Subsection 190.01 of these rules if the decision issued by the Administrator fails to resolve the vendor's grievance(s). (3-15-02)

181. -- 189. (RESERVED)

190. FULL EVIDENTIARY HEARING.

01. Request. The Commission shall provide a vendor an opportunity for a full evidentiary hearing. The vendor or the vendor's designated representative may request a full evidentiary hearing following the receipt of an unfavorable decision issued by the Administrator pursuant to Subsection 180.03 of these rules. The written request shall be delivered to the Administrator, with a copy to the Committee chair, within fifteen (15) calendar days of the aggrieved party's receipt of the Administrator's decision. (3-15-02)

02. Suspension. If the conduct of the vendor places the facility or permit in jeopardy, the Supervisor may suspend or terminate the agreement or contract pending the decision of the full evidentiary hearing. (3-15-02)

03. Time and Place of Hearing. The evidentiary hearing shall be held in the Commission headquarters at a mutually convenient time. (3-15-02)

04. Time Limit. The hearing procedure shall be limited to ninety (90) calendar days, beginning on the date the request for hearing is filed by the vendor. The time limit may be extended due to illness of the vendor or delay in obtaining evidence because of circumstances beyond the control of the vendor or the Program. (3-15-02)

05. Hearing Officer. The Administrator shall appoint a hearing officer to conduct the evidentiary hearing and issue a report. (3-15-02)

06. Hearing Notice. A notice of the hearing date shall be provided to the vendor at least twenty-one (21) calendar days prior to the date set for the hearing. (3-15-02)

07. Legal Counsel. The vendor may arrange to have legal counsel or other representation. Such counsel shall be at the expense of the vendor. (3-15-02)

08. Evidence. The hearing officer shall make a reasonable effort to obtain the most credible evidence of fact in the case, and the rules of evidence do not apply. (3-15-02)

09. Conduct of Hearing. Each party shall be given an opportunity to present its case, examine and cross-examine witnesses, present argument, and rebut evidence. (3-15-02)

10. Transcripts. A transcript of the proceedings shall be made available to the parties upon request. The Program shall pay all transcript costs associated with the conduct of the hearing. (3-15-02)

11. Report of Facts, Findings, Conclusion, and Recommended Decision. (3-15-02)

a. The hearing officer shall submit a report to the Administrator within twenty-one (21) calendar days after the hearing. This report shall include: the issues and relevant facts adduced at the hearing; applicable provisions of law, rules, and Commission policy; findings of fact and conclusions of law with respect to issues; and the reasons and basis thereof. (3-15-02)

b. The report shall also set forth any action necessary to resolve the issue and a recommended decision. (3-15-02)

12. Service of Report. The report shall be served on the Administrator and all parties to the hearing. (3-15-02)

13. Written Comments, Arguments, and Exceptions. Parties to the hearing may, within fifteen (15) calendar days of the date the report was received in the Administrator's office, file written comments, arguments, and exceptions to the report with the Administrator. Comments, arguments, and exceptions received in a timely fashion become a part of the record and shall be considered by the Administrator in making a final decision. (3-15-02)

14. Exclusive Record for Decision. The transcript of testimony, exhibits, and all papers and documents filed shall constitute an exclusive record for decision. (3-1-93)

15. Decision. The final decision of the Administrator shall be mailed to the vendor within thirty (30) days of receipt of the hearing officer's report. (3-15-02)

191. -- 199. (RESERVED)

200. ARBITRATION.
If a Vendor is dissatisfied with a decision rendered after a full evidentiary hearing, the vendor may request that an arbitration panel be convened by filing a complaint with the Secretary of the U.S. Department of Education in accordance with 34 CFR 395.13. (3-15-02)

201. -- 209. (RESERVED)

210. EXPLANATION TO VENDORS OF RIGHTS AND RESPONSIBILITIES.
The Program shall furnish to each vendor copies of documents relevant to the operation of the facility, including rules and procedures, a written description of the arrangements for providing services, the agreement and permit covering the operation of the facility, and shall provide explanation of these documents upon request by the vendor. (3-15-02)

211. -- 219. (RESERVED)

220. DISCRIMINATION.
The Program shall not discriminate against any applicant, licensee or vendor on the basis of gender, race, age, creed, color, religion, physical or mental handicap, sexual orientation, or national origin. (3-15-02)

221. -- 999. (RESERVED)

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