

111 CMR: MASSACHUSETTS COMMISSION FOR THE BLIND

111 CMR 3.00: VENDING FACILITIES PROGRAM

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3.01: Scope and Purpose

111 CMR 3.00 establishes terms and conditions governing operation of the vending facilities program. The purpose of the program is to enhance economic opportunities for blind persons. The purpose of 111 CMR 3.00 is to provide clarity and coherence in the administration of the program.

3.02: Authority

111 CMR 3.00 is promulgated pursuant to 20 U.S.C. c. 6A, § 107 (the Randolph-Sheppard Act), and implementing regulations at 34 C.F.R. Part 395; M.G.L. c. 6, §§ 129, 130, 131J and 133 through 133E; and 29 U.S.C. Sec. 701 *et. seq.* and implementing regulations at 45 CFR Part 395. (*See* definition at 111 CMR 3.03).

3.03: Definitions

As used in 111 CMR 3.00:

Blind Person means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have:

- (a) no more than 20/200 central visual acuity in the better eye with correcting lenses; or
- (b) an equally disabling loss of 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 20°.

Business Hours means the hours during which a permit indicates a given facility shall or may be open for business.

CMR means Code of Massachusetts Regulations.

CFR means Code of Federal Regulations.

Chapter means the regulations found at 111 CMR 3.00.

Commission means the Massachusetts Commission for the Blind.

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Commissioner means the Commissioner of the Massachusetts Commission for the Blind.

Committee means State Committee of Blind Vendors as described at 111 CMR 3.16, unless the context indicates otherwise.

Direct Competition means the presence and operation of a vending facility on the same premises as a vending facility operated by a vendor, except that vending facilities operated in areas serving employees the majority of whom normally do not have direct access to the facility operated by a vendor shall not be considered to be in direct competition with the facility operated by the vendor. For purposes of determining whether a facility or machine constitutes direct competition, direct access shall be measured in terms of uninterrupted ease of approach and the amount of time required to patronize the facility.

Director means the Director of the Vending Facilities Program at the Commission.

Facility means vending facility.

Federal Property means any building, land or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

Going Stock means the amount of merchandise and supplies that an outgoing vendor leaves for the incoming vendor, representing the amount of merchandise and supplies necessary to operate the facility for two weeks at the level at which it has operated for the outgoing vendor's final three months of operation.

Gross Profit means the difference between the prices at which merchandise is purchased and sold by a vendor.

Individual Location Installation or Facility means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

Initial Stock means merchandise and supplies furnished by the Commission to a facility when it is first established by the Commission, representing the Commission's best estimate of merchandise and supplies needed for one week.

License means a written instrument that is issued to a blind person by the Commission, authorizing such person to operate vending facilities on federal or other property.

Licensee means a blind person who has a license from the Commission to operate a vending facility on federal or other property, which license has not been suspended or revoked. A licensee may or may not be a vendor.

Management Services means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

Merchandise means the goods or commodities available for sale at a vending facility.

Net Proceeds means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such vendors).

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Normal working hours means an eight hour work period between the approximate hours of 6:00 A.M. to 6:00 P.M., Monday through Friday, or the hours specified as normal working hours in a particular permit.

Permit means the written agreement between the Commission and a site grantor authorizing the Commission to operate a vending facility.

Personal leave of absence means any period of time in which a licensee ceases operation of or employment by a facility where there is no legal entitlement for such absence.

Program means the vending facilities program at the Massachusetts Commission for the Blind.

Qualified applicant means an individual determined by the Commission to be blind, a citizen of the United States, 18 years of age or older, and meeting the eligibility criteria for the Program's training course.

Randolph-Sheppard Act means that federal law found at 20 U.S.C. c. 6a, § 107 *et seq.*, as amended giving priority to licensed blind vendors in the operation of vending facilities on federal property. Its implementing regulations are at 34 CFR Part 395 and are enforced by the United States Department of Education.

Satisfactory site means an area that:

- (a) is fully accessible to facility patrons;
- (b) has sufficient space available for the vending and storage of articles necessary for the operation of a facility, which space shall not be less than 250 square feet in the case of federal properties; and
- (c) has sufficient electrical, plumbing, heating, and ventilation outlets for the facility to be operated in full compliance with applicable health laws and building codes.

Set-aside means funds which accrue to the Commission from an assessment against the net proceeds of each vending facility pursuant to 111 CMR 3.08(9) and any income from vending machines on federal property which accrues to the Commission pursuant to 111 CMR 3.10.

Site grantor means a legal entity which has executed a permit authorizing the Commission to establish and/or operate a vending facility on property within the control of said entity.

State means state, territory, possession (of the United States,) Puerto Rico, or the District of Columbia.

State Committee means State Committee of Blind Vendors as described at 111 CMR 3.16, unless the context indicates otherwise.

Vending facility means either an automatic vending machine, cafeteria, snack bar, cart service, shelter, counter, or such other appropriate auxiliary equipment 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 applicable health laws, and including the vending or exchange of chances authorized by state law and conducted by an agency of the Commonwealth.

Vending machine means, for the purpose of assigning vending machine income under this chapter, a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

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Vending Machine Income means receipts (other than those of a Vendor) from vending machine operation on Federal property, after deducting the cost of goods sold including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

Vendor means a licensee who is operating a vending facility on federal or other property.

Vendor of Record means a vendor who either:

- (a) began operating his or her current facility prior to the effective date of this regulation and is identified in the program's records as so operating said facility; or
- (b) began operating his or her current facility on or after the effective date of this regulation and has executed an agreement substantially the same as the Vendor of Record Agreement at 111 CMR 3.19: *Appendix 2*.

Vendors Agreement means a Selection Agreement and/or a Vendor of Record Agreement as described at 111 CMR 3.08(2), and substantially the same as the Agreements at 111 CMR 3.10: *Appendix 1 and 2*.

3.04: Licensure

(1) Issuance. The Commission shall issue a license for an indefinite period of time but subject to suspension or revocation to each qualified applicant who has successfully completed the appropriate training program as required by the Director, which license shall specify whether the licensee is authorized to operate a vending machine stand and/or wet stand and/or dry stand and/or cafeteria. Upon the effective date of 111 CMR 3.00, the Commission shall issue a license to each person who has successfully completed the Program's training course.

(2) Suspension and Revocation.

- (a) The Commission may suspend or revoke a license it has issued if, after affording the vendor an opportunity for a full evidentiary hearing pursuant to 111 CMR 1.00, it finds that the licensee:
  1. operated a vending facility in violation of 111 CMR 3.04, the permit, or a vendor's agreement; or
  2. is not blind; or
  3. is not a United States citizen; or
  4. failed to correct violations or to make adequate his or her performance score subsequent to a letter of warning issued pursuant to 111 CMR 3.12; or
  5. received three or more letters of warning within a 12 month period pursuant to 111 CMR 3.12; or
  6. put at serious and immediate risk the particular facility and/or the health, safety or well-being of any individual.
- (b) License suspension shall last for a specified period of time and/or until the licensee performs a particular act: however in no event shall suspension exceed three years. During the suspension period, the individual may not operate a vending facility, submit a valid application for operation of a facility pursuant to 111 CMR 3.06, receive set aside funds pursuant to 111 CMR 3.08(9), become a member of the State Committee of Blind Vendors, vote in an election under 111 CMR 3.16, or accrue seniority. Previously accrued seniority shall not be lost by virtue of license suspension.

(3) Reissuance of Licenses. Any person whose license has been revoked may receive a new license if and only if the Commissioner finds that he or she is eligible for such reissuance, is a qualified applicant, and, as required by the Director, has successfully completed the Commission's training course (notwithstanding any prior completions of said course).

3.05: Training

The Commission shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended. The Commission shall ensure that in the selection of applicants for training, preference shall be given to individuals in need of employment. Such programs may include on-the-job training in all aspects of vending facility operation for persons with capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for licensees. The Commission shall further ensure that post-employment services shall be provided to licensees as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and available suitable employment is maintained within the vending facility program.

3.06: Selection of Vendor

(1) Notice of Opportunity. Subsequent to execution of a permit or subsequent to receipt of notice of pending vacancy in a facility operating under a permit reasonably anticipated to remain effective for one year or more, the Commission shall give notice to all licensees and invite applications for operation of the facility. Notice and invitation shall be furnished by program newsletter or by letter and shall describe the facility's gross sales for the previous year, if any; availability of the permit for review by licensees; directions to the facility; a deadline for receipt of applications; and such other information as may be deemed necessary.

(2) Application. No application may be accepted for review by the Commission unless it consists of a signed writing containing identification of date, applicant, vending facility, a clear statement of the applicant's desire to operate the facility, a clear statement of order of preferred facilities where more than one is the subject of concurrent application by the same licensee, and unless prior to the deadline for the submission of applications it is delivered either by certified mail return receipt requested to the program or by the applicant or his or her designee to a program staff member in exchange for a signed receipt.

(3) Selection Board. Selection for operation of vending facilities shall be performed pursuant to 111 CMR 3.06 by the Director, taking into consideration the recommendation of a Selection Board consisting of two program staff members chosen by the Commission and three Committee members chosen by the State Committee of Blind Vendors. Selection Board members shall serve coterminous with State Committee members: *i.e.* for two year terms beginning the first day of September of every odd numbered year. Each formal Board decision shall require participation by at least four Board Members.

(4) Selection Process.

(a) The Selection Board shall select for recommendation to the Director the most senior qualified applicant in the highest priority category.

(b) Relative seniority of applicants shall be measured pursuant to 111 CMR 3.06(5) as of the day of notice of invitation to apply issued pursuant to 111 CMR 3.06(1).

(c) Any licensee shall be deemed qualified for purposes of selection if and only if both on the day of notice of invitation to apply under 111 CMR 3.06(1) and on the day of selection he or she:

1. has a license which is not under suspension and is valid for the type of facility sought; and
2. received an averaged passing score on his or her most recent two evaluations, if any; and
3. within the previous 45 days has not rejected a selection to operate a vending facility which is functioning or was reasonably anticipated to be functioning within a reasonable time after selection; and
4. within the previous 90 days has not accepted selection and become vendor of record to operate a vending facility which is functioning or was reasonably anticipated to be functioning within a reasonable time after selection; provided that the average sales of the previous vendor, if any, at the advertised location, are 20% greater than the current stand, except that this *proviso* shall not apply if the vendor is the sole bidder for the facility in question; and

3.06: continued

5. within the previous 30 days has not received a warning letter pursuant to 111 CMR 3.12; and
  6. meets the requirements of the permit in question.
- (d) The first highest priority category shall consist of licensees who have worked as vendors for at least six consecutive months within three years of the date of notice and invitation to apply issued pursuant to 111 CMR 3.06(1). The second highest priority category shall consist of all licensees who are not in the highest priority category. For purposes of determining priority status, licensees within each category shall be of equal priority.
- (e) In the event two or more qualified applicants in the highest priority category have the same seniority which seniority is greater than that of any other qualified applicant, then the Board shall select the applicant whose seniority includes the greater number of days as a vendor as opposed to licensee. In the event two or more applicants in the highest priority category have the same seniority which seniority is greater than that of any other qualified applicant, and no such applicant has worked a greater number of days as facility operator as opposed to facility employee, the Director shall make the selection, using his discretion.
- (f) Where the decision of the Director is different than the recommendation of the Selection Board, the Director shall advise the Committee of the rationale underlying such decision.
- (5) Seniority.
- (a) Seniority shall accrue only during a licensee's full-time operation of or employment by a facility. With respect to operation of a facility, seniority shall begin to accrue on the date a vendor begins operation, and shall continue to accrue for up to two years if the facility is closed through no fault of the vendor. With respect to employment by a facility, seniority shall begin to accrue on the date remunerative employment begins. Seniority shall not accrue during one or more personal leave of absence days or when a license is under suspension. Seniority accrued prior to the effective date of 111 CMR 3.00 shall be measured according to the regulation then in effect. Accrued seniority shall be lost upon revocation of a vendor's license.
- (b) Seniority of persons in the first highest priority category as described at 111 CMR 3.06(4)(d) shall be calculated such that the number of days worked as a licensee shall be deemed  $\frac{1}{2}$  the value of days worked as vendor.
- (6) Acceptance and Non-acceptance of Selection. Within seven calendar days of the Selection Board's recommendation to the Director of an applicant for operation of a facility, the Director shall give him or her written notice of the decision, provided the Director accepts the recommendation. Within five business days of the Director or his designee tendering the notice, the applicant shall give written notice of acceptance or non-acceptance. Acceptance shall be indicated by delivering a signed vendor's agreement to the Commission. Failure to so deliver within the five-day period automatically shall be deemed a non-acceptance. Upon a licensee's non-acceptance of selection, or upon revocation of acceptance occurring within 90 days of acceptance of selection, or upon a licensee's death the Director shall successively select and give notice to the next most senior qualified applicant in the highest priority category subject to the Director's discretion as above. The above stated seven and five day notice requirements shall apply to each successive selection of an applicant. Where no qualified applicant is available, the Director may identify an alternative procedure of vendor selection. All notices furnished pursuant to 111 CMR 3.06(6) shall be delivered certified mail return receipt requested or in-hand in exchange for a signed receipt.

3.07: Stock and Equipment

- (1) At or before the time that a facility is to begin operation, the Commission shall provide such equipment and initial stock as it deems necessary. Right, title and interest in such equipment and stock shall vest in the Commission.
- (2) At the time that an outgoing vendor ceases operation of a facility, he shall leave going stock and/or payment for the incoming vendor as described at 111 CMR 3.13(1).
- (3) At his or her expense, the vendor shall clean and repair facility equipment to ensure that it remains in attractive condition and good working order at all times.

3.07: continued

(4) When necessary to ensure operation of the facility, the Commission shall replace damaged or obsolete equipment pursuant to Commission guidelines; provided that when such damage results from the intentional or negligent act or acts of the vendor or his agent, either the vendor shall repair or replace the equipment at his or her expense, or, in the event that the vendor fails to so replace or repair, the Commission shall do so and the vendor shall reimburse the Commission.

(5) Fixtures or equipment installed in a facility by the Commission shall not be removed or materially altered, except with the Commission's prior written approval. Additional fixtures or equipment shall not be installed in a facility, except by the Commission or with the Director's prior written approval.

3.08: Operation

(1) Location and type. The Commission shall select satisfactory sites for vending facilities and types of facilities to be provided.

(2) Vendors agreements.

(a) Prior to operating a facility, each licensee shall sign a selection agreement with the Commission effective on the date of execution. The agreement shall substantially conform with the form at 111 CMR 3.19: *Appendix 1*, and shall contain the following information and such other information as the Commissioner shall from time to time require: the address of the facility; an assertion that the licensee has a valid appropriate license issued pursuant to 111 CMR 3.00; an assertion that the licensee shall operate the facility in full compliance with 111 CMR 3.00, the permit, and other applicable legal requirements; a notice of resignation of operation of present facility, if applicable; and a promise to pay or arrange payment of all outstanding bills by the date of resignation.

(b) On the first day he or she begins operation of a particular vending facility, each vendor shall sign a vendor of record agreement with the Commission effective on the date of execution. The agreement shall substantially conform with the form at 111 CMR 3.19: *Appendix 2*, and shall contain the following information and such other information as the Commissioner shall from time to time require: the address of the facility; an assertion that the vendor has a valid and appropriate license issued pursuant to 111 CMR 3.00; an assertion that the vendor is not vendor of record at any other facility and an assertion that the vendor shall operate the facility in full compliance with 111 CMR 3.00, the permit, and other applicable legal requirements.

(c) Unless otherwise indicated, the term vendors agreement when used in 111 CMR 3.00 shall refer to the selection agreement and/or vendor of record agreement as described at 111 CMR 3.08(2)(a) and (b).

(3) Permit. Prior to the licensee signing the selection agreement and vendor of record agreement, the Commission shall provide him or her a copy of the permit, if any.

(4) Merchandise. Unless otherwise provided in the permit or vendors agreements, only merchandise authorized in the permit shall be sold, and said merchandise shall be of reasonable quality and sold at fair market prices.

(5) Substitutes. Within 90 days of operating his or her vending facility, or immediately upon hiring consultant(s) or employee(s), whichever occurs first, each vendor shall furnish to the Commission the names, addresses and telephone numbers of at least one person designated by him as substitute for purposes of operating the facility in the vendor's absence. Each substitute shall be licensed by the Commission or duly trained by the vendor in the operation of vending facilities.

(6) Facility personnel. Each vendor may hire such employees, substitutes and consultants as he or she deems necessary for operation of the facility provided that every effort shall be made to hire blind personnel. The decision to hire personnel shall be solely the responsibility of each vendor. No vendor, vendor's consultant, substitute or employee shall be considered an employee of the Commonwealth, Commission or site grantor for any purpose whatsoever.

3.08: continued

(7) Hours. Unless otherwise agreed in writing by the Commission, a given site grantor and vendor, each vendor shall be physically present at his or her facility at least 35 hours per week except when on up to five weeks (25 business days) vacation leave per year, or up to 15 days sick leave per year. In addition, each vendor may take medical leaves of absence as needed, provided documentation is provided to the satisfaction of the Director.

(8) Vacations, Sick Leave, Leaves of Absence. Unless otherwise agreed in writing by the Commission, a given site grantor and given vendor, each vendor may determine the duration and timing of his or her vacation(s) and personal leave(s) of absence provided he or she notifies the Commission in advance of each such vacation and leave; does not threaten the relationship between the Commission and site grantor by the terms and conditions of any such vacation or leave; and identifies to the Commission the substitute(s) who will operate the facility during such vacation or leave. Each vendor may determine the duration and timing of his or her required sick leave provided he or she notifies the Commission immediately upon discovering the need for same, and identifies to the Commission the substitute(s) who will operate the facility during such sick leave.

(9) Set Asides. After the Commission provides full information on matters relevant to establishment and operation of a set aside program, if the majority of vendors votes to establish such a program, then, with the participation of the State Committee of Blind Vendors, the Commission shall establish a set aside program in which funds from the net income shall be used for the following purposes to the extent determined by the Commission, subject to the Commission's method for determining a charge for each purpose:

- (a) maintenance and replacement of equipment;
- (b) purchase of new equipment;
- (c) management services;
- (d) assuring a fair minimum return to vendors; and
- (e) retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time for vendors.

(10) Insurance. Each vendor shall at his or her expense, maintain the following insurance coverage effective beginning the first day of operation of his or her vending facility:

- (a) Comprehensive general liability insurance, including product liability, for actions arising out of and in connection with the vendor's use and activities pursuant to 111 CMR 3.00, in the minimum single limit or equivalent split limits of \$500,000.00 per occurrence or at such commercially reasonable level as the Commissioner may reasonably prescribe, identifying the site, and naming the site grantor as additional named insured. Upon receipt of the policy, copies shall be submitted by the vendor to the Commission and the site grantor.
- (b) Workers' Compensation and Employers' Liability Insurance. Upon receipt of such policies, copies shall be submitted by the vendor to the Commission and the site grantor.

(11) Reports. Each vendor shall furnish to the Commission complete, accurate and true reports at the times and in the forms the program requires.

(12) Advertising. Subject to applicable law, terms of the permit and vendor's agreement, and site grantor's written approval, each vendor may advertise to the general public the existence and location of his or her vending facility; however he or she shall neither post nor permit to be posted on or at the facility handbills, stickers, or other such notices.

3.09: Types of Facilities

(1) For purposes of 111 CMR 3.00, the program shall license operation of up to four types of facilities: wet stands, dry stands, cafeterias, and vending machine operations.

(2)(a) Wet stand means a vending facility which serves coffee and/or soup and is not a cafeteria.

(b) Dry stand means a vending facility which does not serve coffee and/or soup and is not a cafeteria.



3.09: continued

(c) Cafeteria means a food-dispensing facility capable of providing a broad variety of prepared foods (including hot meals) and beverages, primarily through the use of a line where customers serve themselves from displayed selections which facility may be fully automatic or may provide limited waiter or waitress service and in any event shall provide table or booth seating.

(d) Vending machine operation means a vending facility consisting solely of one or more vending machines.

(3) Operation of cafeterias shall be governed by 111 CMR 3.09(3).

(a) Priority in the operation of cafeterias by vendors on federal property shall be afforded when the Secretary of the federal Department of Education determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to vendors to the greatest extent possible.

(b) In order to establish the ability of vendors to operate a cafeteria in such a manner as to provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services, the Commission shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the Commission is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under 111 CMR 3.09(3)(a).

(c) Notwithstanding the requirements of 111 CMR 3.09(3)(a) and (b), federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by vendors on federal property through direct negotiations with the Commission whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: provided, however, that the provisions of 111 CMR 3.09(3)(a) and (b) shall apply in the event that the negotiations authorized by 111 CMR 3.09(3)(c) do not result in a contract.

3.10: Vending Machine Income

(1) Vending machine income from vending machines on federal property which has been disbursed to the Commission by a property managing department, agency, or instrumentality of the United States under 111 CMR 3.10(3) shall accrue to each vendor operating a vending facility on such federal property in an amount not to exceed the average net income of the total number of vendors within Massachusetts, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under 111 CMR 3.10(1). No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to the Commission in excess of the amounts eligible to accrue to vendors in accordance with 111 CMR 3.10(1) shall be retained by the Commission.

3.10: continued

(2) Vending machine income which is retained under 111 CMR 3.10(1) by the Commission shall be used by it 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 vendors, if it is so determined by a majority vote of vendors, after the Commission has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the Commission for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to vendors by the Commission shall be reduced *pro rata* in an amount equal to the total of such remaining vending machine income.

(3) The on-site official responsible for the federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on federal property under his control and shall otherwise ensure compliance with the provisions of 111 CMR 3.10(4) through (10).

(4) 100% of all vending machine income from vending machines on federal property which are in direct competition with a vending facility operated by a vendor shall accrue to the Commission which shall disburse such income to such vendor operating such vending facility on such property provided that the total amount of such income accruing to such vendor does not exceed the maximum amount determined under 111 CMR 3.10(1). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the vendor under 111 CMR 3.10(1) such additional income shall accrue to the Commission for purposes determined in accordance with 111 CMR 3.10(2).

(5) 50% of all vending machine income from vending machines on federal property which are not direct competition with a vending facility operated by a vendor shall accrue to the Commission which shall disburse such income to the vendor operating such vending facility on such property. In the event that there is no vendor, such income shall accrue to the Commission, except as indicated under 111 CMR 3.10(6). The total amount of such income disbursed to such vendor shall not exceed the maximum amount determined under 111 CMR 3.10(1). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the vendor under 111 CMR 3.10(1), such additional income shall accrue to the Commission for purposes determined in accordance with 111 CMR 3.10(2).

(6) 30% of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a vendor and which are on federal property at which at least 50% of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the Commission which shall disburse such income to the vendor operating a vending facility on such property. In the event that there is no vendor on such property, such income shall accrue to the Commission. The total amount of such income disbursed to such vendor shall not exceed the maximum amount determined under 111 CMR 3.10(1). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the vendor under 111 CMR 3.10(1), such additional income shall accrue to the Commission for purposes determined in accordance with 111 CMR 3.10(1).

(7) The determination that a vending machine on federal property is in direct competition with a vending facility operated by a vendor shall be the responsibility of the on-site official responsible for the federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the Commission.

(8) The collection of vending machine income and its disbursement to the Commission shall be conducted on at least a quarterly basis.

3.10: continued

(9) All arrangements pertaining to the operation of vending machines on federal property not covered by contract with, or by permits issued to the Commission shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of 111 CMR 3.10(9).

(10) The provisions of 111 CMR 3.10 shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under Title 10 of the United States Code; to income from vending machines operated by the Veterans Canteen Service; or to income from vending machines not in direct competition with a vending facility at individual locations, installations, or facilities on federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

(11) The provisions of 111 CMR 3.10 shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which vendors or the Commission may either:

- (a) receive a greater percentage or amount of vending machine income than that specified in 111 CMR 3.10(5), (6), and (7); or
- (b) receive vending machine income from individual locations, installations, or facilities on federal property the total of which at such individual locations, installations or facilities does not exceed \$3,000 annually.

3.11: Evaluations

(1) Purpose. Routine evaluations shall be conducted by the Commission based on the forms promulgated by the Program Director. These evaluations shall serve as one measure of the degree to which a vendor is operating his or her facility consistent with 111 CMR 3.00, the permit, and the vendor's agreements.

(2) Frequency. Each facility shall be evaluated at least twice per calendar year, and on such occasions as the Commission may deem appropriate.

(3) Scoring. Each evaluation shall utilize the Evaluation Form issued by the Program Director. For purposes of 111 CMR 3.11(2), 75 points or more shall be deemed a passing score, 74 points or less shall be deemed a failing score.

(4) Procedure. Within 30 days of completion of an evaluation, the Commission shall deliver (in hand or by mail) to the vendor a written evaluation. The vendor may appeal the results of said evaluation within 30 days of receipt thereof. Upon request, the Commission shall offer assistance to raise future scores, and may perform a follow-up evaluation within 45 days of the evaluation in question.

3.12: Claims, violations and inadequate performance

(1) Claims. Immediately upon receiving oral and written notice of a complaint or claim by any person alleging intentional, negligent or criminal wrongdoing by a licensee or his or her agents, each vendor shall report the complaint or claim to the Commission regardless of its merit or lack of merit. In the event the site grantor or his agent is the party alleging wrongdoing, the Commission shall afford the licensee an opportunity to respond to such allegations and it shall perform an investigation of same. The licensee shall cooperate with the Commission by providing written response to the allegation, assisting with the investigation, and making reasonable and good faith efforts to eliminate any problems and resolve any disputes.

3.12: continued

(2) Violations and Inadequate Performance. If the Commission finds that a vendor is operating a facility in violation of 111 CMR 3.00 or Commission guidelines and/or without a passing score on his or her performance evaluation, it shall issue a letter of warning to the vendor specifying the violation and/or the performance score, setting a date by which same must be corrected or improved, and informing the vendor of his or her rights under 111 CMR 3.15. The Commission may suspend or revoke the vendor's license if the violations have not been corrected and/or the performance evaluation score made adequate by the specified date, or if three or more warning letters are issued to the vendor during any 12 month period.

3.13: Termination

(1) In General. As described in 111 CMR 3.13, a permit may be terminated at the option of the site grantor or Commission and a vendor of record agreement may be terminated at the option of the vendor or Commission. Upon termination of either permit or vendor of record agreement, the vendor shall assure that at minimum, the condition of the facility is as good as when he or she began operating it, and that either all outstanding bills have been paid, or arrangements completed to assure that such bills will be paid. Upon termination of a vendor of record agreement, the vendor shall assure that the incoming vendor receives sufficient going stock or, in the alternative, that the incoming vendor receives a payment representing the difference between the value of merchandise and supplies furnished by the outgoing vendor and the value of two full week's merchandise and supplies necessary to operate the facility, based on the average weekly purchases from the prior three months as represented in the facility's records. The incoming vendor, outgoing vendor, and a program staff member shall jointly complete an inventory of the merchandise, supplies and money at the facility, and sign a report documenting same.

(2) Vendor's Option. Unless otherwise provided in the vendor of record agreement or in the permit, a vendor may terminate an agreement to operate a given vending facility only upon his or her:

- (a) delivery of written notice to the Commission at least 60 days prior to the effective date of termination;
- (b) physical or mental incapacity to continue operating the facility; or
- (c) death.

Termination under 111 CMR 3.13(2) shall be effective on delivery of notice and shall not be subject to revocation without written consent of the Program Director. Delivery of notice shall be made in-hand or by certified mail return receipt requested.

(3) Site Grantor's Option. Unless otherwise agreed, a site grantor may terminate a given permit or right to operate a facility with cause upon reasonable notice to the Commission. Within seven days of receipt of written notice from a site grantor that the grantor intends to terminate a permit, the Commission shall give written notice of same to the vendor. If the site grantor's decision is based upon a claim of wrongdoing by a licensee, then the Commission shall investigate and the licensee shall cooperate as described in 111 CMR 3.12. Upon a finding by the Commission that the termination is based on wrongdoing by the licensee, the Commission may terminate the licensee's seniority rights within the program, or suspend or revoke his or her license.

(4) Commission's Option. Unless otherwise agreed, the Commission may terminate a given permit or right to operate a facility upon reasonable notice to the site grantor. Within seven days of delivery of written notice to a site grantor that the Commission intends to terminate a permit, the Commission shall give written notice of same to the vendor who is under agreement to operate the facility in question. Unless otherwise provided in the vendor's agreement, the Commission may terminate an agreement for a vendor to operate a given vending facility upon finding:

- (a) grounds for license suspension revocation;
- (b) that the vendor is physically or mentally incapable of operating the facility; or
- (c) that the vendor has died.

3.14: Information

Each licensee shall have a right to access to all financial data of the program directly relevant to the operation of the program, including quarterly and annual financial reports, provided that such disclosure does not violate any laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a licensee the Commission shall arrange a convenient time to assist in the interpretation of such financial data.

3.15: Grievances

(1) Administrative review and fair hearing. Any licensee or program applicant dissatisfied with any action or inaction of the Commission may initiate administrative review and fair hearing proceedings in accordance with 111 CMR 1.00.

(2) Appeal. Any licensee or program applicant dissatisfied with the results of his or her fair hearing may either:

- (a) seek judicial review under M.G.L. c. 30A, § 14; or
- (b) if the vending facility is subject to the Randolph Sheppard Act, request that an ad hoc arbitration panel be convened under 34 CFR Part 395.13.

3.16: State Committee

(1) Election. The Commission shall conduct a biennial election of the State Committee of Blind Vendors (the Committee) to consist of seven members. Only vendors shall be permitted to vote and run for office. Each election procedure shall be designed to assure representation of the interests of senior and newly licensed vendors operating all types of facilities in all geographic areas of the Commonwealth with a goal of providing proportional representation of vendors on federal property and other property. Each vendor shall be furnished with a nomination form for nomination of himself or herself or another vendor. The Commission shall set and give notice of a deadline for return by certified mail of the forms. The election shall be conducted in accordance with guidelines established by the Commission. The seven nominees receiving the most votes shall constitute the Committee for a term of two years. Participation by any vendor in any election shall not be conditioned upon payment of dues or any other fees. Each term shall begin on the first day of October of every odd-numbered year.

(2) Chairperson and Subcommittees. At its first meeting after the election, the Committee shall elect a chairperson from among its members. The Committee shall give written notice to the Commission of the name of its chairperson, of the titles and functions of any subcommittees, and of the names of subcommittee chairpersons and members.

(3) Meetings. The Committee shall meet once each month with one or more Commission staff members at an agreed upon time and place. From time to time, on agreement, the committee and Commission may hold special meetings. The Commission may reimburse Committee members for reasonable travel expenses incurred traveling to and from monthly and special meetings.

(4) Committee functions. The Committee shall:

- (a) participate with the Commission in major policy decisions and in the development of policy, programs, transfer and promotion systems for vendors, and in the development of training and retraining programs;
- (b) receive grievances of vendors and serve as their advocates; and
- (c) sponsor, with the Commission, meetings and instructional conferences.

3.17: Nondiscrimination

Neither the Commission nor any vendor may discriminate against any person based on race, color, creed, ancestry, national origin, age, sex, sexual orientation, handicap, political affiliation, or use of guide dog.

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3.18: Invalidity of any provision

If any provision of 111 CMR 3.00 or the application thereof is determined to be invalid, such determination shall have no effect on other provisions or the application thereof not specifically determined invalid. The provisions of 111 CMR 3.00. and the various applications thereof are severable.

REGULATORY AUTHORITY

111 CMR 3.00: 20 U.S.C., c. 6A, § 107; 29 U.S.C., § 701 *et seq.*

3.19: Appendix 1: Form

MASSACHUSETTS COMMISSION FOR THE BLIND  
VENDING FACILITY PROGRAM  
SELECTION AGREEMENT

I \_\_\_\_\_, holder of a valid license to operate a vending facility (wet stand, dry stand, vending machine operation, cafeteria) hereby accept selection to operate the vending facility located at \_\_\_\_\_ and agree that on or about \_\_\_\_\_ I shall begin operation of that facility in full compliance with the Vending Facility Program Regulations, with the permit, and with all other legal requirements.

I also hereby give notice of resignation as operator of the vending facility located at \_\_\_\_\_ and agree that I shall terminate operation of that facility on or about \_\_\_\_\_. On that date I will have either paid or completed arrangements to pay all outstanding bills.

I understand that effective on delivery this notice of resignation is final and that I cannot revoke it without the written consent of the Vending Program Director.

\_\_\_\_\_  
\_\_\_\_\_  
DATE

SIGNATURE OF VENDOR

\_\_\_\_\_  
\_\_\_\_\_  
DATE

DIRECTOR OR DESIGNEE  
VENDING FACILITY PROGRAM

3.19: Appendix 2: Form

MASSACHUSETTS COMMISSION FOR THE BLIND  
VENDING FACILITY PROGRAM  
VENDOR OF RECORD AGREEMENT

I \_\_\_\_\_, holder of a valid license to operate a vending facility (wet stand, dry stand, vending machine operation, cafeteria) hereby agree that this date I shall begin operation of the vending facility located at \_\_\_\_\_ in full compliance with the Vending Facility Program Regulations, with the permit, and with all other legal requirements. I am not vendor of record at any other facility.

\_\_\_\_\_  
\_\_\_\_\_  
DATE

SIGNATURE OF VENDOR

\_\_\_\_\_  
\_\_\_\_\_  
DATE

DIRECTOR OR DESIGNEE  
VENDING FACILITY PROGRAM