

Title 22. Public Property

Chapter II. Division of State Services for the Blind, Division of Workforce Services, Department of Commerce

Subchapter A. Generally

Part 5. Vendor Operating Procedures Manual

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"1.2. Legal Authority

The Vending Facility Program is authorized by the Randolph-Sheppard Act (P.L. 74-732), as amended by (P.L. 83-565) and (P.L. 93-516) and Arkansas Act 201 of 1969. The Division of Services for the Blind authorized by Arkansas Act 481 of 1983 has been designated by the Commissioner of the Rehabilitation Services Administration in accordance with the Regulations issued pursuant to the Randolph-Sheppard Amendments of 1974 (P.L. 93-516) as the State Licensing Agency to issue licenses to blind persons for the operation of vending facilities on Federal and other property. The authority of the Division of Services for the Blind in consultation with the Committee of Blind Vendors, to establish policies and standards is contained in Section 9.1 of the Rules for the Administration of the Vending Facility Program for Blind Persons (See Appendix B)."

Subpart 1. Introduction

22 CAR § 5-101. Purpose of manual.

(a) The purpose of this part is to provide guidance to the vendor in order for him or her to carry out the duties and responsibilities of operating a vending facility in accordance with good business practices and rules prescribed by the Division of State Services for the Blind, in consultation with the State Committee of Blind Vendors.

(b) The manual is designed to be used as an aid to ensure that customers are provided quality vending services, thus permitting the vendor to earn a substantial income.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-102. Eligibility.

(a) In order to be licensed as a blind vendor, a person must be:

(1) Legally blind, not more than 20/200 central vision in the better eye with correcting lenses, or 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 twenty degrees (20°);

(2) A citizen of the United States; and

(3) Certified as qualified to operate a vending facility after having completed the Vending Facility Training Program of the Division of State Services for the Blind.

(b) The Vending Facility Program Training Specialist will obtain from the vocational rehabilitation counselor documentation and verification of the eligibility requirements to be maintained in the trainee's/vendor's file:

(1) Legally blind (current eye examination);

(2) Citizenship (Employment Eligibility Verification, Form I-9); and

(3) Certification by the state licensing agency as qualified to operate a vending facility.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-103. Criteria for evaluation and training.

(a) The following criteria must be met prior to the time that the person is admitted to the Vending Facility Program for evaluation and/or training.

(b) These criteria are based on federal regulations of the Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., and Division of State Services for the Blind rules.

(c) The applicant must:

(1) Be legally blind;

(2) Be a citizen of the United States;

(3)(A) Possess either a high school diploma or a GED certificate.

(B) In the absence of either of these, a score of 10 on the Wide Range Achievement Test (WRAT) or a score on an equivalent test that indicates general level of educational achievement will be acceptable;

(4) Possess necessary skills to travel independently and become oriented to new environments utilizing reasonable assistance;

(5) Have necessary personal hygiene and grooming skills that are acceptable to the general public; and

(6) Have the ability to:

(A) Write braille at a level proficient enough to record basic information and to read braille at a level that will enable the person to assimilate classroom training materials;

(B) Read and write in large print; or

(C) Use recorded and taped materials to:

(i) Assimilate lesson materials; and

(ii) Maintain business records.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Codification Notes. "GED" means General Education Development test.

22 CAR § 5-104. Application, evaluation, and training process.

(a) Applicant.

(1) An individual who has been referred in writing with accompanying documentation to the Vending Facility Program Training Specialist via a Division of State Services for the Blind Vocational Rehabilitation Counselor.

(2) An applicant must meet the criteria outlined in 22 CAR § 5-103 in order to be eligible for entry into evaluation.

(b) **Evaluee.**

(1) A person accepted by the Vending Facility Program to have met the initial application requirements and who is participating in a formalized period of evaluation.

(2) Subsequent to entry into the training phase of the Vending Facility Evaluation and Training Program, an evaluee is subject to both the passage of the formal written examination and in-location evaluations.

(c) **Trainee.** Any individual who has been deemed to have successfully completed the four-week evaluation phase and is in a custom designed training program to become a licensed blind vendor.

(d) **Certified licensee.**

(1) Those individuals who have:

(A) Successfully completed the designated, customized Vending Facility Training Program; and

(B) Been certified by the specialist to be eligible for licensing as a licensed blind vendor.

(2) Certified licensees do not hold a license until after their probation at the initial assignment to a vending facility as established by transfer and/or promotion policies.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-105. Evaluation and training rights and responsibilities.

(a) **Purpose.**

(1) The purpose of evaluation and training is to:

(A) Directly ascertain the potential to manage a vending facility; and

(B) Provide in a customized fashion vocational training needs for eligible persons to become licensed blind vendors.

(2)(A) The training is not designed to provide remedial or personal adjustment training for prospective licensees.

(B) Alternative skills for dealing with blindness should have been accomplished prior to the individual's referral to the Vending Facility Program for vocational training.

(3) Should it be determined that additional alternative skills to deal with blindness are insufficient to meet the vocational training needs, the prospective trainee will be referred to the sponsoring vocational rehabilitation counselor for additional training prior to the continuation or conclusion of the program evaluation.

(b) Program rights and responsibilities.

(1) The program has the sole right to assign prospective trainees or evaluatees to specific vending facilities for evaluation or training purposes.

(2) Every effort will be made to accommodate the evaluatee's or trainee's particular needs or personal situations but the final placement in a location is the sole right of the program.

(c) Training manager's rights and responsibilities.

(1) A licensed vending facility vendor providing training services may, with or without cause or reason, have an evaluatee or trainee removed from a location by making a request to the Vending Facility Program Training Specialist.

(2) Evaluatees or trainees have no right of assignment to any specific vending facility for evaluation or training.

(d) Payment.

(1) Under no circumstances will an evaluatee or trainee be paid for any work performed during the assignment to a vending facility as an evaluatee or trainee.

(2) Additionally, no evaluatee/trainee will be used as paid relief help or in substitution or in lieu of paid relief help with the exception of a solo experience as part of the final segment of the program's training curriculum.

(3) Licensed blind vendors who are serving as training vendors will take sick, nonessential, or vacation leave in accordance with agency policies and not utilize evaluatees or trainees to serve as unpaid relief help.

(4) Certified licensees will be eligible to work as temporary relief help between the time of license certification and initial assignment.

(e) Training money.

(1) Requests for additional transportation, maintenance, or other types of training money will be made by the evaluatee/trainee to the sponsoring vocational rehabilitation counselor.

(2) The program serves only as a mechanism in order to ensure more expedient payment of funds when appropriate vocational rehabilitation authorizations for services have been submitted by the sponsoring vocational rehabilitation counselor.

(f) Complaints and grievances.

(1) Applicants, evaluatees, trainees, and persons certified for licensing have no rights under the federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., or the program's grievance procedures (22 CAR § 5-1101 et seq.) or access to the State Committee of Blind Vendors for redress of grievances or complaints.

(2) Applicants, evaluatees, trainees, and persons certified for licensing are considered vocational rehabilitation clients and have rights under the federal Vocational Rehabilitation Act and Division of State Services for the Blind client grievance procedures.

(3) Applicants, evaluatees, trainees, and persons certified for licensing but not yet assigned to a location will be referred to the sponsoring vocational rehabilitation counselor regarding formal complaints or grievances concerning the program.

(g) Completion of evaluation.

(1) After the conclusion of a successful evaluation period, the specialist will determine, in consultation with the trainee and, if necessary, the Vending Facility Program Administrator, the type and approximate duration of training based upon information obtained from the initial four-week evaluation.

(2) Persons beginning training simultaneously may or may not complete training at the same time.

(3) Determination for certification will be made by the specialist, and final decisions of licensing are the responsibility of the administrator.

(h) Assignments.

(1) Specific vending facility assignments are the sole responsibility of the specialist.

(2) Efforts will be made to provide a variety of training experiences dependent upon the evaluation results of the individual involved.

(i) Absenteeism.

(1) All persons in evaluation or training are expected to be at their assigned location, either classroom or vending facility, on time and on each day of scheduled evaluation or training.

(2) Each person will complete a minimum of twenty (20) days of evaluation, with the exception of unexcused absences.

(3) Those persons committing three (3) or more unexcused absences during evaluation or training will be automatically dropped.

(4)(A) Excused absences will be made up during the evaluation to maintain the twenty-day evaluation rule.

(B) Excused absences are absences for reason of:

(i) Legitimate illness or other medical reasons; or

(ii) Other circumstances as approved by the specialist.

(C) The program reserves the right to obtain a doctor's statement for absences due to medical reasons.

(5) If a trainee or evaluatee is absent, the specialist should be notified by the evaluatee or trainee on the same date of the absence or the absence will be counted as an unexcused absence.

(j) Conduct.

(1)(A) All evaluatees and trainees will be expected to perform in a businesslike manner when in vending facilities or at the program office or other vending facility evaluation or training locations.

(B) Any unbusinesslike conduct will be grounds for expulsion from the training program.

(2) The use of alcoholic beverages or other chemical substances not specifically prescribed by a medical doctor while in evaluation or in a training setting or coming onto an evaluation or training setting under the influence of such substances is grounds for expulsion from the training program and will not be tolerated.

(3) Abusive language, cursing, racial or sexual slurs, or failure to respond to a reasonable request made by the training specialist or training vendor shall be grounds for expulsion from the evaluation or training program.

(4) Theft of property or funds from the program or a program vendor shall be grounds for automatic expulsion from evaluation or training.

(k) ServSafe or Department of Health training.

(1) ServSafe or Department of Health training is mandatory for all trainees as of November 7, 2005.

(2) A trainee will not be certified for licensing until they pass the course.

(3) A trainee will have two (2) opportunities to pass before they are denied certification.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-106. Licensing.

(a) Upon successful completion of the Vending Facility Training Program, the individual will be certified for licensure.

(b)(1) All certified licensees will be placed on a four-calendar-month probationary period upon initial assignment to a location.

(2) If performance is not satisfactory, the probationary period can be extended for another calendar month.

(c) At the end of the probationary period, a determination will be made whether or not to license the trainee.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-107. Deficiency and upward mobility training.

(a)(1) The respective Vending Facility Program Specialist shall provide short-term training.

(2) If the specialist deems it advisable, the specialist shall submit in writing a request to the Vending Facility Program Administrator for such a service documenting the specific needs and tentative goals and objectives for such training.

(b)(1) In the event a licensed blind vendor is not recommended by the specialist for transfer or promotion, the licensed blind vendor must be provided training to correct any deficiencies noted in order to satisfy the requirements for operations.

(2) This training may include, but not be limited to:

(A) On-the-job training; and

(B) Classroom training.

(c)(1) Any manager that sells foods prepared on-site and any manager recommended by his or her specialist to take the ServSafe or Department of Health course must participate in and complete the course.

(2)(A) They will have two (2) opportunities to pass the course paid by the program.

(B) Any third or more attempts will be paid for by the manager.

(3) Also, managers that refuse or are unable to pass the course will be reduced to selling prepackaged foods only.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-108. Extension of license certification.

(a) The certified licensee will remain certified for licensing for a period of two (2) years.

(b)(1) Should the licensee not be assigned a location at the end of the two (2) years, the Vending Facility Program Training Specialist will determine, through testing, what the licensee will need to obtain for an extension to the certification.

(2) This could consist of:

- (A) On-the-job training;
- (B) Additional classroom instruction; and/or
- (C) Examinations.

(c)(1) Upon successful completion, the licensee will receive an extension of certification for an additional two (2) years or until the licensee has refused the third location offer.

(2) Licensee can refuse only two (2) location offers (see 22 CAR § 5-501) without losing certification no matter how many certification extensions licensee might obtain.

(d) Should licensee refuse or not successfully complete the above requirements, the individual would have the certification terminated and would have to apply for Vending Facility Program training as a new trainee to enter the program.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 2. The State Committee of Blind Vendors

22 CAR § 5-201. Committee functions.

(a) The functions of the State Committee of Blind Vendors are to:

(1) Actively participate with the Division of State Services for the Blind in major administrative policy program development decisions affecting the overall administration of the Vending Facility Program;

(2) Receive and transmit to the division grievances at the request of blind vendors, serve as advocates for such vendors in connection with such grievances, and to advocate for such vendors, including themselves, in a professional and business-like manner, in connection with such grievances presented to Vending Facility Program administration;

(3) Actively participate with the division in the development and administration of a state system for the transfer and promotion of blind vendors;

(4) Actively participate with the division in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the division, meetings and instructional conferences for blind vendors within the state.

(b) Between regular meetings, the committee will carry on its functions through subcommittees designated for that purpose.

(c)(1) In order to ensure opportunities for effective and constructive, active participation by the committee, the committee will receive advance written notice of matters within its purview that are being considered for decision.

(2) Appropriate subcommittees will receive notice of and invitations to attend important discussions and decision-making meetings in areas of the subcommittees' interests.

(d)(1) The committee at each of its meetings shall have the opportunity to initiate matters for consideration by it and the division.

(2) The division shall give the views and positions of the committee careful and serious consideration.

(3) Although the division has the ultimate responsibility for the administration of the Vending Facility Program, it shall notify the committee in writing of the decision reached or the action taken if it does not adopt the views and positions of the committee.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-202. Committee organizational structure.

(a)(1) The State Committee of Blind Vendors shall consist of five (5) members who shall be the same as the officers and members of the board of directors of the Arkansas Association of Blind Vending Facility Managers.

(2) The chairperson, vice chairperson, and secretary of the committee shall be the same as the president, vice president, and secretary of the Arkansas Association of Blind Vending Facility Managers.

(b)(1) The chairperson, or in his or her absence the vice chairperson, shall preside over all regular and special meetings of the committee.

(2) Unless otherwise specified by the committee, the parliamentary procedure utilized will be Robert's Rules of Order, Revised.

(3) The agenda for each meeting of the committee shall be prepared by the Vending Facility Program Administrator in consultation with the chairperson of the committee.

(c) The committee shall conduct four (4) regular meetings per year on a quarterly basis.

(d) Unless otherwise determined by the administrator and the committee, meetings shall be held at the Division of State Services for the Blind's state office in Little Rock.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-203. Election of committee members.

(a)(1) Members of the State Committee of Blind Vendors shall be elected to serve terms of two (2) years.

(2) The number of consecutive terms vendors may serve on the State Committee of Blind Vendors shall not be limited.

(3) Participation by any blind vendor in the election of State Committee of Blind Vendors members shall not be conditioned upon the payment of dues or other fees.

(b) Elections are conducted under the following procedures:

(1)(A) The President of the Arkansas Association of Blind Vending Facility Managers shall appoint a nominating committee consisting of from three (3) to five (5) members.

(B)(i) This committee shall nominate five (5) vendors from throughout the state.

(ii) The nominees shall be for the positions of:

(a) President;

(b) Vice president;

(c) Secretary/treasurer; and

(d) One (1) member from each of the geographic areas as may be established by the Division of State Services for the Blind and the State Committee of Blind Vendors.

(iii) When no vendor is willing or able to represent their geographical area of the state, then a vendor will be elected at-large to fill a regional position.

(iv) Currently, the geographic areas are:

(a) Area I, all locations within the City of Little Rock; and

(b) Area II, all locations outside the city limits of Little Rock;

(2) Elections will be conducted in odd-numbered years at the business meeting held during the sales seminar at which time nominations may be made from the floor;

(3) A vendor nominated from the floor to a position representing a geographical area must operate a vending facility in that area, except when no vendor is willing or able to represent their geographical area of the state, then a vendor will be elected at-large to fill that position; and

(4)(A) A vacancy created as a result of a member who does not represent a geographical area leaving the Vending Facility Program will be filled at the next annual sales seminar if the vacancy occurs during the first year of the term.

(B) A vacancy occurring during the second year shall be appointed by the President of the Arkansas Association of Blind Vending Facility Managers.

(c)(1) If a vendor who represents a geographic area ceases to operate a vending facility in that area either as a result of transfer or promotion or of leaving the program for any reason, his or her position shall be deemed vacant.

(2) As soon as practicable thereafter, a special election will be conducted among the vendors who operate facilities in the pertinent area under procedures to be prescribed by the division in consultation with the State Committee of Blind Vendors.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 3. Licenses

22 CAR § 5-301. Issuance of licenses.

(a) A license to operate a vending facility may be issued to persons who are determined by the Division of State Services for the Blind to be:

- (1) Blind;
- (2) Citizens of the United States; and
- (3)(A) Certified as qualified to operate a vending facility after having successfully completed the division's training program for blind vendors.
 - (B) This training shall include:
 - (i) Training in the various types of vending facilities in the program; and
 - (ii) Experience in managing a vending facility for a period of time.
- (b) Priority will be given to qualified persons who are in need of employment.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-302. Termination of licenses.

(a) Licenses shall be issued for an indefinite period of time, but shall be subject to suspension or termination by the Vending Facility Program Administrator under the following circumstances:

- (1) Improvement of vision so that the vendor no longer meets the medical definition of blindness;
- (2) Extended illness with medically documented diagnosis of prolonged incapacity to operate the vending facility in a manner consistent with the needs of the location or other available facilities within the program;
- (3) Failure of a vendor to sign the agreement of operation between the Division of State Services for the Blind and the vendor after having accepted assignment to operate a vending facility;
- (4) Failure to operate the facility according to the provisions of:

- (A) The operating agreement;
 - (B) The specific location contract/permit; or
 - (C) This part;
- (5) Withdrawal of the vendor from the program upon his or her written notification to the division;
- (6) Abandonment of facility;
- (7) Possession or use of firearms or other weapons by vendor or staff as defined in 22 CAR § 5-402(p);
- (8)(A) Possession, use, or consumption of alcohol, drugs, or other substances by vendor or staff while on the premises.
- (B) Reasonable exceptions will apply to medication as prescribed by:
 - (i) A doctor;
 - (ii) A dentist; or
 - (iii) Another healthcare professional;
- (9) Should a displaced vendor fail to accept a location in accordance with 22 CAR § 5-502; or
- (10) Should a vendor not accept assignment to a facility after going through the process of transfer and promotion under 22 CAR § 5-504.
- (b)(1) In the event that the division is required to remove a vendor due to a specific written grantor request, the administrator shall:
- (A) Determine, after on-site review, the basis for removal under the conditions in subsection (a) of this section, above; and
 - (B) Specify in writing whether the vendor is:
 - (i) Displaced;
 - (ii) Suspended; or
 - (iii) Terminated.
- (2) Such vendor retains all appeal rights specified in 22 CAR § 5-1101 et seq.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 4. Division of State Services for the Blind Vendor Obligations

22 CAR § 5-401. Operating agreement.

The operating agreement between the Division of State Services for the Blind and the vendor, which must be signed at the time the vendor accepts assignment to a vending facility, sets forth the following terms and conditions:

(1) The responsibilities of the division to provide management services to the vendor, including assistance and supervision;

(2)(A) A statement that the vendor will receive the net proceeds from the vending facility that he or she operates.

(B) Net proceeds are defined as the amount remaining from the sale of articles or services of vending facilities and any vending machine or other income accruing to blind vendors after deducting the costs of such sale and other expenses (excluding set-aside charges required to be paid by the blind vendors);

(3) The duties of the vendor and the requirement that the vendor must perform his or her duties in accordance with:

(A) Standards prescribed by the division;

(B) Applicable health laws and regulations; and

(C) The terms of the permit granted for the contract entered into with the federal or other agency or organization in control of the site of the vending facility;

(4) The responsibility of the vendor to furnish such reports as the division may require;

(5) The right of the vendor to terminate the operating agreement at any time;

(6) The termination of the operating agreement upon the termination of the permit or contract;

(7) The termination or revocation of the operating agreement upon the failure of the vendor to operate the vending facility in accordance with:

(A) The operating agreement;

(B) Policies and standards; or

(C) Applicable federal, state, or local laws or regulations; and

(8) The vendor's rights and remedies as guaranteed under the Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., shall be included in the operating agreement.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-402. Specific policy requirements.

(a) **Appearance of facility.** The vendor is responsible for keeping the facility clean and neat in appearance at all times.

(b) **Appearance of vendor and employees of the vendor.**

(1) The vendor and all relief and extra employees are expected to be neat and clean in appearance at all times.

(2) The vendor shall have ultimate responsibility for the conduct and appearance of all permanent or temporary extra help in the employment of the vendor assigned to the facility.

(c) **Betting or wagering.** The vendor will not bet, accept bets, wager, or be a party to any activity of this type while managing or in the vicinity of the vending facility, except as allowed by Arkansas Code § 23-115-601 et seq.

(d) **Cigarette and tobacco permits.**

(1) After the first cigarette and tobacco permits that are purchased as part of the initial stocks and equipment, the vendor will be responsible for obtaining on an annual basis and displaying such permits in accordance with applicable state rules.

(2) The fees for the permits will be charged as miscellaneous operating expenses.

(e) **Checks.** The vendor will be personally responsible for cashing checks for any individual from the cash drawer of the facility.

(f) **Credit.**

(1) Customer credit shall be granted at the discretion of the vendor.

(2) Credit arrangements with wholesalers and suppliers will be left up to the individual vendor provided that such arrangements do not result in undue complaints or problems.

(g) **Display of license.** The vendor's license to operate a vending facility will be appropriately displayed at the location.

(h) **Food service permit.** Vendors operating facilities on nonfederal property will purchase a food service permit from the Department of Health each year.

(i) **Petty cash.**

(1) An amount of petty cash shall be maintained at a level that coincides with good business practices.

(2) The amount of petty cash is shown on the weekly sales report as cash at the beginning of the day each Friday.

(3)(A) If petty cash is stolen, it will be replaced only once during the period reporting year and after a police report is turned in to the Vending Facility Program.

(B) Replacement will be limited to the assigned amount but only up to a maximum of four hundred dollars (\$400).

(4) No other moneys will be replaced.

(j) **Pricing of merchandise.**

(1) Prices of merchandise will be maintained at competitive levels, e.g., those charged by like establishments within the geographic area.

(2) However, prices will be maintained at levels high enough to ensure a reasonable profit.

(k) **Suppliers.**

(1) Vendors will make every effort to work out problems with suppliers.

(2) If problems cannot be resolved, the vendor may call the specialist for assistance.

(l) **Telephone usage.**

(1) Collect calls to the offices of the specialists or other agency personnel are requested to be kept to an absolute minimum.

(2) When necessary, long distance calls that are business related may be charged as operating expenses.

(3) Vendors should use the In-WAT State Calling System.

(m) **Training.**

(1) Training a prospective vendor.

(A) If requested to do so by the Vending Facility Program Training Specialist, the vendor will be expected to provide on-the-job training to a person who is enrolled in the training program to become a licensed vendor.

(B) The vendor will provide the training under the guidance and supervision of the training specialist.

(C) The vendor will receive a fee for providing training services.

(D) Vendors will be selected to provide training based upon their demonstrated skills and abilities to train prospective vendors.

(E) A Trainer Agreement Form (see Appendix A) will be completed by the vendor when providing training.

(2) Vendor in-service training.

(A)(i) Periodically, in-service training will be conducted for licensed vendors.

(ii) The training will be provided in order to keep vendors aware of innovations in management and merchandising techniques and of changes in policy and procedure.

(B) When there is documented evidence on file that a vendor has failed to conform to policy and procedures, or whose management or merchandising skills are less than adequate, it may be necessary that the vendor be provided intensive refresher training.

(n) Coin wrappers.

(1) The program will not be responsible for supplying coin wrappers.

(2) Vendors should contact the banking or other financial institution with which they do business and request supplies of coin wrappers from such institutions.

(o) Sandwich labels.

(1) Effective March 1, 1986, the program will no longer be responsible for supplying sandwich labels at cost to vendors.

(2) Vendors should contact a printing company of the vendor's choice in the vendor's local community to request supplies of printed sandwich labels.

(3) The cost of these labels may be deducted as an operating expense of the business.

(p) Firearms or weapons.

(1) Vendors and their staff are forbidden to possess firearms or weapons under any circumstances in the vending facilities or on the premises on which the vending facility is located.

(2) Weapons are determined by state law.

(3) Violation of this policy is grounds for automatic revocation of the operating license.

(q) Smoking/no smoking.

(1) The program will comply with the specifications of any building manager or grantor concerning the designation of a vending facility as a smoking or nonsmoking area.

(2) This policy shall apply to all vending facilities whether in public or private buildings.

(3) In situations where smoking has been disallowed by the building manager in a vending facility, the licensed blind vendor shall also comply with the designation of a nonsmoking area if the licensed blind vendor happens to be a smoker.

(4)(A) Neither the program staff nor the licensed blind vendor shall be responsible, however, for enforcement of nonsmoking policies in a vending facility, and the program will not purchase no smoking signs unless extenuating circumstances such as the potential loss of a facility is involved if the program does not purchase said signs.

(B) The program will not under any circumstances purchase no smoking signs in federal or state facilities.

(C) Such signs or other enforcement shall be the responsibility of the granting federal or state agency or designated federal or state property manager.

(r)(1)(A) Vendors whose average profit percentage, excluding rent, is under thirty percent (30%) gross or sixteen percent (16%) net for eight (8) prior periods will be given a written warning by the Vending Facility Program Administrator that he or she has three (3) operating periods beginning with the next to raise such percentage to

thirty percent (30%) gross or sixteen percent (16%) net or above or he or she may be placed on probation subject to subsequent disciplinary action in accordance with 22 CAR § 5-505.

(B) Included in the written warning will be a list of deficiencies and plan of operations for improvement.

(C) Also, the vendor is not eligible to bid on any location while in violation of this policy.

(2) The specialist will:

(A) Assist the vendor in implementing procedural changes to improve operations during the three (3) operating periods; and

(B) Submit to the administrator a biweekly progress report noting action taken to improve operations (due on the first and fifteenth of each month following the date of receipt of warning).

(3) In the event the three (3) operating periods fall during a time of inactivity for the location (e.g., plant closings, summer break, etc.), an extension may be given with the approval of the administrator.

(4)(A) At the end of the three (3) operating periods, the specialist shall certify to the administrator those vendors whose average profit, excluding rent, continues to fall below thirty percent (30%) gross or sixteen percent (16%) net.

(B) Included in such certification shall be a recommendation to:

(i) Place the vendor on probation subject to subsequent disciplinary action in accordance with 22 CAR § 5-505;

(ii) Close the location and place vendor in displaced status; or

(iii) Continue operations based upon extenuating circumstances with written approval of the administrator.

(5) Such recommendations shall be based upon the following conditions:

(A)(i) Probation.

(ii) If the vendor has failed to correct the deficiencies noted in the written warning or failed to follow the improvement plan and the average profit percentage, excluding rent, continues below thirty percent (30%) gross or sixteen

percent (16%) net, he or she may be placed on probation subject to subsequent disciplinary action in accordance with 22 CAR § 5-505;

(B)(i) Closure of location.

(ii) If the vendor has followed the plan of improvement and corrected any deficiencies noted in the written warning, and the average profit percentage, excluding rent, continues to fall below the thirty percent (30%) gross or sixteen percent (16%) net margin, he or she may be placed in displaced status and the location closed due to unsuitability as a profitable operation.

(iii) He or she retains all rights and privileges afforded a displaced vendor as provided in this part; and

(C)(i) Operation under adverse conditions.

(ii) If the vendor has corrected any deficiencies noted in the written warning and followed the improvement plan, and the average profit percentage, excluding rent, continues to fall below the thirty percent (30%) gross or sixteen percent (16%) net margin, the administrator may authorize continued operation of the facility.

(iii) For continued operation under adverse conditions, the specialist must certify in writing to the administrator that closure of such a location would be detrimental to the program as a whole.

(iv) The specialist shall continue to report biweekly (on the first and the fifteenth) regarding actions taken to improve profitability of the location.

(s) Telephone bills.

(1) Vendors are authorized to charge as an operating expense the maximum charge for a single business line telephone.

(2) Features such as call waiting, call forwarding, or other accessories will not be allowed as operating expenses.

(3) Vendors are responsible for the purchase of their own telephone instrument, and this is not an allowable equipment or operating expense.

(4) Payment of telephone bills is the responsibility of the individual licensed vendor and not the responsibility of the program.

(5)(A) Long distance charges will not normally be allowed as an operating expense.

(B) If a vendor feels that a long distance charge was necessary for the operation of the vending facility and no other alternatives were available, then the vendor should submit an itemized list of the long distance charges as supplied by the operating telephone company for long distance service to the respective specialist for approval.

(C) An explanation of the applicable long distance charge or charges must be submitted in writing by the licensed blind vendor to the vendor's specialist.

(t) **Drugs or alcohol.**

(1) Possession, use, or consumption of drugs, alcohol, or other substances by the vendor or their staff while on the premises is not allowed.

(2) Violation of this policy is grounds for automatic revocation of the operating license.

(3) Reasonable exceptions to this policy will apply to medication as prescribed by:

(A) A doctor;

(B) A dentist; or

(C) Another healthcare professional.

(u) **Nonemployees.**

(1) Any person who is not employed by the vendor as extra help, whether essential or nonessential, will not be allowed to stay or loiter in the location.

(2) Suppliers, regular customers, and repair individuals are excluded.

(v) **Merchandise loss.**

(1) Merchandise that is stolen or damaged due to circumstances beyond the manager's control will be replaced.

(2) The manager must:

(A) Inform their specialist of the loss; and

(B) Send them a written list of the merchandise that needs to be replaced.

(3) When the list is received and processed, a check will be sent for the merchandise replacement.

(w) **Background checks.**

(1) As of August 6, 2018, Division of Arkansas State Police background checks are required for extra help workers upon application to work in the program and/or as a manager at an assigned location.

(2) The background check will be processed with the application for work.

(3) The applicant must process the ASP-122 form and, once hired, the program will reimburse the applicant for the cost.

(4) Managers are not allowed to have the applicant at the site or assign duties to extra help workers until clearance of the background check is completed and the application processed.

(5) The manager must inform their specialist of all extra help workers at their assigned facility.

(6) Failure to comply with this policy will be grounds for disciplinary actions in accordance with 22 CAR § 5-505.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-403. Evaluation of vendor.

(a) **Purpose.** The purpose of vendor evaluations are to:

(1) Ensure that the conditions of the permit and regulations are met;

(2) Ensure that customers receive continuous quality vending services; and

(3) Assess factors that are considered when a vendor wishes to be transferred or promoted.

(b) **Evaluation procedures.**

(1) An evaluation should be completed by the vending facility specialist at least annually unless circumstances warrant otherwise to document his or her observations of the vendor's performance in such areas as:

(A) Neatness and cleanliness of facility;

- (B) Food protection;
- (C) Personal appearance;
- (D) Customer service;
- (E) Marketing and merchandising; and
- (F) Fiscal information.

(2) The specialist's observations will be discussed with the vendor.

(3) The criteria to be evaluated is contained in the basic guidelines for facility evaluation (see Appendix A).

(4)(A) A copy of the evaluation, signed by the vendor and the specialist, will be provided to the vendor at the time the evaluation is performed.

(B) A copy of the evaluation will be placed in the vendor's personnel file.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-404. Facility audits.

(a) Audits may be performed at any time on any location within the program by Vending Facility Program staff.

(b) The audit procedure will include the following:

(1)(A) During the audit, the vendor will be replaced by the office.

(B) The office will pay for the extra help person working the location in the vendor's absence.

(C) The vendor will retain all current benefits during the audit period;

(2) A complete review of the payouts and other financial data collected on the specific location;

(3) The financial status of the location and findings of the review will be discussed with the vendor and, as needed, written recommendations will be discussed with the vendor by the program office;

(4) If corrective action on the part of the vendor is recommended, a specific period of time will be designated for improvement to take place; and

(5) If the situation is not corrected within the specified time, the vendor may be placed on probation in accordance with 22 CAR § 5-505.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-405. Annex locations.

(a) The vendor of a vending facility interested in adding an annex to their location must contact the Vending Facility Program Administrator to discuss or present a detailed proposal of the operations in order for the annex to be considered.

(b)(1) The administrator will:

(A) Review and evaluate the proposal; and

(B) Make a recommendation to either:

(i) Open the annex; or

(ii) Not open the annex.

(2) If the vendor does not agree with the administrator's decision, he or she may pursue the matter in accordance with 22 CAR § 5-1101 et seq.

(c)(1) Should the annex be approved and become operational, it will become part of the original vending facility location.

(2) The vendor will:

(A) Operate the annex under all guidelines and rules in this part; and

(B) Process the day-to-day operations through the original vending facility location.

(d) If the facility goes up for bid, the annex will be included in the bid and award.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 5. Vendor Employment Statuses

22 CAR § 5-501. Initial assignment.

(a) When a trainee is certified as qualified for licensing, he or she is eligible to bid on locations as outlined in 22 CAR § 5-504, below.

(b) Additionally, if a new or existing location or locations are vacant and no licensed vendor requests a transfer or promotion to this location or locations, then the Vending Facility Program Administrator in consultation with the Vending Facility Program Training Specialist and Chairperson of the State Committee of Blind Vendors may offer said location or locations to the prospective licensee.

(c)(1) A person certified for licensure may reject up to two (2) offers of assignment without jeopardizing their status.

(2) If a third assignment is rejected, then that person will lose their certification for licensing and all rights thereto.

(3) If the person wishes to reenter the Vending Facility Program, he or she must do so as any new applicant.

(d) Spouses of licensed vendors will not be required to take assignments outside of the geographic area in which they reside.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-502. Displacement status.

(a) A vendor who has been displaced through loss of entitlement to operate a vending facility through no fault of his or her own:

(1) May be given priority as to determination of the person to be assigned to a new or vacant facility if it is equivalent to the facility that he or she formerly operated; and

(2) Will continue to accrue seniority and vacation in displacement status (see 22 CAR § 5-503 for definition of seniority).

(b)(1) Displaced vendors cannot earn or use sick leave, and any accumulated sick leave will be frozen until the vendor is assigned a location.

(2) When the vendor is reassigned a location, he or she will earn sick leave in accordance with 22 CAR § 5-602.

(c)(1) When the Vending Facility Program initiates or receives written notification from the grantor to close the location, the vendor will become displaced if it is through no fault of his or her own.

(2) When verbal notification is received, the Vending Facility Program Administrator will send a letter verifying that the location will close on a specific date.

(3)(A) The vendor will then be placed in displaced status the date of the letter.

(B) The vendor does not have to be inventoried out of the location to receive displaced status benefits.

(d) Should the grantor decide not to close the location after notification and the location remains open, the vendor will be removed from displaced status.

(e) "Equivalent facility" means a facility having similar physical requirements of operation and that does not exceed fifty dollars (\$50.00) per period or a total amount not to exceed six hundred fifty dollars (\$650) per fiscal year above the gross profit of the vendor's previous location from which he or she has been displaced.

(f)(1) The determination of vendor's average gross profit shall be based upon vendor's previous thirteen (13) reporting periods.

(2) The vendor's average gross profit shall be computed by taking the sum of the total vendor's gross profit for the thirteen (13) periods prior to displacement and dividing by thirteen (13).

(3) If the vendor in displaced status was a newly licensed vendor for less than thirteen (13) periods prior to displacement from the date of initial licensing to operate a vending facility, then the period of time from the date of licensing to the date of displacement shall be used to compute the vendor's total and average per period gross profit.

(4) Newly licensed vendor's gross profit per period shall be computed by taking the total vendor's gross profit and dividing by the number of four-week fiscal reporting periods or fractions thereof.

(5) In the case of a vendor who has had more than one (1) assignment within the previous thirteen (13) reporting periods or after the date of initial licensing to the time of displacement, the vendor's average gross profit shall be computed by taking the

total of all vendor's gross profit regardless of assignment from the covered reporting periods, not to exceed thirteen (13) reporting periods, and then divide by that number of periods.

(g)(1) The following process shall be used to determine the financial equivalence of a location.

(2) A facility that has been in existence greater than thirteen (13) fiscal reporting periods shall have the previous thirteen (13) fiscal reporting periods used to determine the average gross profit of the location.

(3) If the location is a new location then the average will be determined for the length of time that the facility has been opened up to a maximum of thirteen (13) reporting periods.

(h)(1) All vacant facilities will be advertised, and vendors in displaced status wishing to place application on the basis of displaced status may do so and will be considered as displaced vendors in accordance with displaced vendor policy.

(2) A displaced vendor may elect to use the displacement option on locations that are equivalent or less if they so choose.

(3)(A) During a one-year period following the displacement, the vendor may decline assignment to any location.

(B) After a period of one (1) year has elapsed since displacement, the vendor must accept any unassigned vending facility.

(C) The offer of such location or locations shall be made in writing to the displaced vendor, and failure to accept such written offers shall cause the displaced vendor's license to be revoked.

(4) When more than one (1) displaced vendor is eligible for a location in this situation, the vendor who has been displaced longest will be given priority for a location.

(i) **Insurance for displaced vendors.** Effective July 1, 1986, those vendors in displaced status shall be eligible to have their health insurance premiums paid partially from the set-aside fund the same as assigned vendors for a period not to exceed one (1) year from the date of displacement.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-503. Transfer or promotion.

(a) When a new facility is established or a vacancy occurs in an existing facility, all vendors will be notified in writing of:

- (1) The availability of the facility;
- (2) Its operating requirements; and
- (3) Actual or potential earnings.

(b) Those vendors meeting the definition of displaced status (see 22 CAR § 5-502) with respect to the new or existing location and placing written application for such a location shall be given priority in accordance with 22 CAR § 5-502.

(c) Vendors who wish to make application for a facility shall do so in writing to their Vending Facility Specialist.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-504. Selection of vendor for transfer or promotion.

(a) The criteria to determine the vendor who will be transferred or promoted are:

- (1) Seniority, provided the other specified criteria are satisfactorily met;
- (2) Ability to meet the physical requirements of operating the facility;
- (3) Satisfactory work habits;
- (4) Work attitude, including good customer relations and cooperation with property management;
- (5) Knowledge and application of sound business practices; and
- (6) Not on probation, suspension, or in violation of 22 CAR § 5-402(r).

(b)(1) "Seniority" means the period of continuous service from the day upon which a vendor was assigned to operate a facility within the program until the day on which it is necessary to compute the amount of seniority he or she has accrued.

(2) Other time that will be computed toward "seniority" includes the date of certification for licensing, which shall be used primarily for determining location assignment among certified licensees who have no accrued "seniority" when no other licensed blind vendor with accrued seniority has made application for transfer or promotion.

(c)(1) All applicants for transfer or promotion shall be ranked on the basis of these criteria by the appropriate members of the Vending Facility Program's staff and the Transfer and Promotion Subcommittee of the State Committee of Blind Vendors.

(2) The recommendation of the staff and the subcommittee along with the reasons for such recommendations will be forwarded to the Vending Facility Program Administrator or his or her designee who shall make the final decision as to the vendor who will receive the transfer or promotion.

(d)(1) In the event a licensed blind vendor is not recommended by his or her specialist for transfer or promotion, the licensed blind vendor must be provided training to correct any deficiencies noted in order to satisfy the requirements for operation.

(2) This training may include, but not be limited to:

(A) On-the-job training; and

(B) Classroom training.

(e)(1) Once the transfer and promotion subcommittee has awarded a location to a vendor, the administrator will immediately notify that vendor.

(2)(A) At that time, the vendor awarded the location cannot refuse to accept the location.

(B) If a vendor chooses to refuse the awarded location, their license is automatically terminated in accordance with 22 CAR § 5-302(a)(10).

(3) The vendor will have a maximum of ten (10) working days to accept inventory assignment to the new location unless the location is not in the vendor's locality.

(4) The vendor will not be eligible to bid or be awarded any other location by transfer or promotion until they have completed ninety (90) days of operations at the awarded location.

(5)(A) In the event that legal action arises over vendor transfer or promotion, the state licensing agency will be responsible for all judgments and legal actions taken.

(B) The set-aside and special programs funds are not subject to any liabilities for management decisions of the state licensing agency.

(f) Composition of Transfer and Promotion Subcommittee.

(1) After the conclusion of the bid application process, the Chairperson of the State Committee of Blind Vendors shall assign a Transfer and Promotion Subcommittee to meet with the administrator in considering applicants for a location.

(2) The subcommittee must consist of the following:

(A) A licensed blind vendor representative from each region of the state;

(B) At least one (1) member of a minority group; and

(C) At least one (1) female.

(3)(A) The subcommittee shall consist of four (4) individuals and the chairperson meeting the above referenced criteria.

(B) No person is eligible to serve on the committee who has submitted an application or who is directly related to anyone submitting an application for transfer or promotion.

(4) The subcommittee shall then be called by the chairperson to meet with the administrator to:

(A) Consider all applicants; and

(B) Make recommendations for transfer or promotion.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-505. Disciplinary action.

(a) If the vendor has engaged in conduct or actions that hinder or are detrimental to the effective operation of the facility, disciplinary action, not subject to 22 CAR § 5-302, termination of licenses, will be taken as follows:

(1)(A) A verbal warning from the Vending Facility Program Administrator or his or her designee.

- (B) This warning will be noted in the vendor's personnel file;
 - (2) A written warning to the vendor setting forth the specific:
 - (A) Policy violations;
 - (B) Steps for correction; and
 - (C) Consequences of continued violations;
 - (3)(A) Should violations continue, the vendor will be placed in probationary status for a prescribed time and specific terms outlined for removal from probation.
 - (B) Probationary periods will not exceed three (3) months.
 - (C) No licensed blind vendor or certified licensee shall be eligible to apply for a transfer or promotion to an existing vacant location if the licensed blind vendor or certified licensee has been placed on probation or suspension.
 - (D) The ineligibility to make application for transfer or promotion shall extend through the entire time of probation and/or suspension, and said persons shall not have the right to make application for transfer and/or promotion until they have been removed from probation or suspension;
 - (4)(A) Continued failure to comply with policies will result in suspension.
 - (B) When a vendor is suspended for any reason, the following criteria will apply:
 - (i) Extra help will be paid from the proceeds of the location, but the licensed blind vendor will receive the net profits;
 - (ii) Vendor is not eligible to apply for transfer or promotion;
 - (iii) Suspension will not exceed ten (10) working days unless extenuating circumstances are involved;
 - (iv)(a) Under extenuating circumstances when suspension exceeds ten (10) days, seniority will be frozen for the length of suspension.
 - (b) A new license will be issued reflecting the adjusted seniority date; and
 - (v) Leave benefits are not available to vendor while on suspension;
- and

(5) Continued failure to comply with policies will result in termination in accordance with 22 CAR § 5-302.

(b) At any step of the disciplinary process, the vendor must be advised of his or her rights and remedies as set forth in 22 CAR § 5-1101 et seq.

(c) **Licensed vendor without a location.** When a vendor has completed actions that place him or her into the status of “a vendor without a location”, the following stipulations apply:

(1)(A) The vendor cannot earn or use sick leave, and any accumulated sick leave will be frozen until the vendor is assigned a location.

(B) When the vendor is assigned a location, he or she will earn sick leave in accordance with 22 CAR § 5-602;

(2)(A) The vendor will have a one-year period from the date the action or actions were completed that he or she can decline assignment to any location.

(B) After a one-year period has elapsed, the vendor must accept any unassigned facility.

(C) If the vendor does not accept assignment and operate the facility, his or her license will be revoked;

(3) Vacation, seniority (22 CAR § 5-505(a)(4)(B)(iv)), retirement, and other matters will be determined in accordance with this part; and

(4)(A) Vendor will not receive any priority in the bid process other than his or her seniority date in accordance with 22 CAR §§ 5-503 and 5-504.

(B) Vendor is not a displaced vendor.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-506. Resignation.

(a)(1) A voluntary separation on the part of the vendor will be considered as an automatic termination of his or her license and program rights.

(2) Once processed, it cannot be withdrawn.

(b)(1) If a vendor decides to rejoin the program, a period of evaluation, reorientation, and training will be necessary.

(2) When completed, the vendor will be relicensed and his or her name will be placed on the ready for employment list as if he or she were a new licensee.

(3) Any money owed to the Vending Facility Program must be repaid before the individual can rejoin the program.

(c)(1) If possible, a vendor is expected to give at least two (2) weeks' notice prior to leaving the program.

(2) If no notice is given, an inventory will be completed at the earliest possible date.

(3) If proper notice is given, an inventory will be completed on the vendor's last working day.

(d) All moneys that are due to the vendor will be paid to the vendor.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-507. Termination.

(a) A vendor may be terminated for the reasons stated in 22 CAR § 5-302, termination of licenses.

(b)(1) When termination occurs, the vendor's license will be revoked.

(2) All moneys that are due to the vendor will be paid to the vendor.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-508. Retirement.

(a)(1) Retirement is a voluntary separation on the part of the vendor.

(2) Retirement is considered an automatic termination of the retiree's:

(A) License;

(B) Program rights; and

(C) Seniority.

(3) If a retirement is processed, it cannot be withdrawn.

(4)(A) If a retiree decides not to retire and wants to return to the program, the retiree must apply for training and go through a period of evaluation, reorientation, and training as any other new trainee.

(B) If retiree completes training and is certified for relicensing, the retiree's name will be placed on the ready for employment list as if the retiree is a new licensee.

(b)(1) Any money owed to the program after a vendor retires must be repaid before the retiree can rejoin the program.

(2) Mandatory retirement will be based on the vendor's mental and physical inabilities to operate:

(A) The facility to which the vendor is assigned; or

(B) Other available facilities within the program.

(3) The vendor will be evaluated annually to determine whether or not the vendor must retire.

(c) All moneys due the vendor at retirement will be paid to the vendor.

(d) A vendor going through mandatory retirement will not be eligible to rejoin the program.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-509. Employment of relief or extra help.

(a) State-paid relief personnel.

(1) State-paid relief personnel are no longer provided for vendors.

(2) Vendors will still receive vacation and sick leave but will arrange for extra help to work their locations.

(b) Essential extra help.

(1) For purposes of definition, "essential extra help" shall be defined as a full-time or part-time employee of a licensed blind vendor essential for the operation of a vending facility in consideration of good management and business practices.

(2) Such essential extra help personnel will be paid in accordance with policies set forth in subsection (f) of this section.

(3) "Nonessential personnel" are defined as persons employed by the vendor in lieu of sick or vacation leave and not essential for the normal operation of the vending facility.

(4) Any extra help, whether to assist the vendor in operating the facility or to substitute for him or her in his or her absence, other than for vacation or sick leave, must be arranged for by the vendor and approved by the Vending Facility Program Specialist.

(c) Required payroll information.

(1)(A) In order to properly process the payroll for essential extra help employees, the Vending Facility Program office must have the following information in order to comply with federal and state laws and allow the processing of the essential extra help employees' payroll:

- (i) Federal tax withholding form (W-4);
- (ii) State tax withholding form (AR-4EC);
- (iii) Immigration and Naturalization Service Form I-9;
- (iv) Employment application form; and
- (v) Copy of Social Security card.

(B) See Appendix A for specific forms.

(2) No essential extra help person's payroll can be processed until all forms have been completed and submitted to the program office.

(d) Payroll reporting.

(1) It is the responsibility of the licensed blind vendor employing essential extra help to report to the respective specialist payroll information by the appropriate deadline.

(2) Vendors failing to report payroll information by the deadline will have employees' payroll computed in accordance with the previous payroll information submitted.

(3) If corrections are needed in the payroll, any such correction will be made in the succeeding payroll period, and no special payroll checks will be authorized or issued.

(4) It shall be the responsibility of the vendor to explain such payroll information to the employed extra help and not the responsibility of the program office when late payroll information is received.

(e) Nonessential extra help.

(1) Effective January 1, 1988, the program office will no longer be responsible for processing the payroll of nonessential extra help personnel as defined in subsection (b) of this section.

(2)(A) For purposes of this policy, those vendors on extended sick leave shall not be considered as having nonessential extra help persons.

(B) Persons employed under this category shall be employed under the category of extended sick leave extra help personnel.

(3) The vendor's specialist should be made aware of the fact that a specific individual or individuals are contracted by the vendor to work as nonessential help.

(4)(A) It shall be the sole responsibility of the licensed blind vendor to pay such individuals contracted under such a status as nonessential extra help.

(B) Vendors shall not pay for such individuals through the proceeds of the location but shall pay from their own personal resources.

(C) Vendors found and proven to be paying nonessential extra help through the proceeds of the location shall be subject to license revocation.

(5) The program office assumes no liability for taxes or other deductions required by federal or state income tax laws and regulations in the contract of nonessential help.

(6) Vendors for personal tax purposes should keep a record of any payment made to such nonessential individuals since it is deductible from their personal income taxes as a business expense.

(7)(A) It is recommended but not required that a vendor maintain a written contract with nonessential extra help contractors.

(B) See Appendix A for a sample agreement.

(8)(A) Effective February 22, 1990, nonessential extra help is limited to twelve (12) days per calendar year.

(B) Use of nonessential extra help beyond twelve (12) days will be subtracted from available vacation leave.

(C) If vacation is not available then the progressive discipline process in 22 CAR § 5-505 will be followed.

(f) **Wages to be paid extra help.** [Repealed.]

(g) **Criteria for employing extra help.** Persons who are employed as extra help should meet the following criteria:

(1) Possess the ability to operate the vending facility in a proper and satisfactory manner;

(2) Be thoroughly reliable and dependable;

(3) Be accurate in reporting and accounting for funds;

(4) Be neat in appearance;

(5) Be courteous and helpful to customers;

(6) Provide the vending facility office with a copy of his or her Social Security card; and

(7) Be approved by the specialist.

(h) **Extra help location illness policy.**

(1) Employees must report health problems to the manager before starting work.

(2)(A) Restrict employee from working with or around food.

(B) Exclude employee from the location if you primarily serve a high-risk population:

(i) Sore throat with fever.

(3) If the employee has one (1) of the following symptoms, or becomes ill with one (1) of the following symptoms while working, they must immediately report their condition to the manager, stop working, and see a doctor:

(A) Diarrhea;

(B) Vomiting; or

(C) Jaundice (a yellowing of the skin and eyes).

(4)(A) Exclude employees with the following illnesses and notify the Department of Health:

(i) Salmonella typhi;

(ii) Shigella spp. (dysentery);

(iii) Shiga toxin-producing E. coli;

(iv) Hepatitis A virus; or

(v) Norovirus.

(B) Work with the Department of Health or medical practitioner when the employee can return to work.

(i) **ServSafe or Department of Health training for extra help.**

(1) Effective November 7, 2005, any manager that wants his or her extra help person to take ServSafe or Department of Health training will pay half (1/2) of the cost and the program will pay half (1/2) of the cost one (1) time.

(2) Whether or not the extra help person passes the course, the program will not spend any additional funds on the training of the extra help person.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 6. Leave Policies

22 CAR § 5-601. Annual (vacation) leave.

(a)(1) Any vendor who has a minimum of one (1) year of service but less than three (3) years of service shall receive five (5) days paid vacation leave per year.

(2) The leave year begins on January 1 and concludes on December 31 of each year.

(3) A vendor who completes the minimum one (1) year of service in the middle of a leave year is eligible for leave after that time and before the end of the leave year.

(4) Any vendor having over three (3) years of seniority will be eligible for ten (10) days of paid vacation per leave year.

(5) When a vendor has over fifteen (15) years of seniority, he or she will be eligible for fifteen (15) days of paid vacation per leave year.

(6) Annual leave does not carry over from one leave year to the next and can be taken in full or half days.

(b)(1) Vacation in excess of allowable paid vacation as stated above is nonessential leave and will necessitate that the vendor pay for the substitute employee or employees.

(2) See 22 CAR § 5-509(e), nonessential extra help, and 22 CAR § 5-604, nonessential leave, for further information.

(3) It is the responsibility of the vendor to arrange for extra help during vacation periods.

(4)(A) The vendor will notify the specialist of the necessary information to enable the specialist to complete the extra help payroll information form.

(B) See Appendix A.

(c)(1) Vendors whose facilities are closed for a period of time due to the shutdown of the establishment on the site where the facility is located may elect to be paid eighty dollars (\$80.00) a day for each day of leave for which they are eligible.

(2) They should apprise their specialist of the time period that the facility will be closed and that they have elected to be paid eighty dollars (\$80.00) a day in lieu of their regular vacation time, as of August 7, 2016.

(3) Payment is subject to availability of funds and a maximum of five (5) days, as of August 4, 2018.

(d)(1)(A) Vendors that do not take all their vacation time prior to December 31 may request that they be paid eighty dollars (\$80.00) a day for each day of unused vacation leave.

(B) This request must be made the last full week of December.

(2) If a vendor is retiring, he or she can request payment of unused vacation days on his or her last working day.

(3) These payments will be subject to the availability of funds, as determined by the Vending Facility Program.

(4) Payment is subject to availability of funds and a maximum of five (5) days, as August 4, 2018.

(e) Sales seminar attendance.

(1) Vendors must attend all meetings of the annual sales seminar on Saturday.

(2)(A) If a vendor does not attend the seminar meetings on Saturday, they will lose five (5) vacation days.

(B) However, if the vendor provides a written statement of explanation for the vendor's absence to the State Committee of Blind Vendors, the committee will review 22 CAR § 5-601 et seq., Leave Policies, to consider whether or not to approve payment of all unused vacation leave of the vendor in question.

(C) If a vendor fails to provide a written statement, the vendor will lose five (5) days of vacation leave in the current year.

(D) If all vacation has been depleted in the current leave year, vendor will lose five (5) vacation days on January 1 of the next leave year.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-602. Sick leave.

(a) Ordinary sick leave.

(1) Sick leave for vendors will accrue at the rate of one-half (1/2) day on the fifteenth day of the month and one-half (1/2) day on the last day of the month from the first date the vendor entered, reenters, or is eligible to accrue leave.

(2) Sick leave can be taken in full or half days.

(3) A maximum of sixty (60) days of sick leave may be accumulated.

(4)(A) If a vendor is absent from a facility due to illness for more than five (5) consecutive working days, a statement from his or her physician must be sent to the Vending Facility Program office before the vendor can return to work.

(B) Otherwise, the vendor will not be compensated for the number of days he or she is absent.

(b) **Extended sick leave.**

(1) In cases where a vendor becomes unable, due to illness, to perform the necessary duties required to operate the facility for an extended period of time, the following criteria will apply.

(2)(A) The vendor will receive the net profits from the facility and retain assignment to it for not more than ninety (90) working days after sick leave is depleted.

(B) A working day is defined as a day in which the location is normally open for business by contractual agreement.

(3)(A) While on extended sick leave, vendors will not earn sick or vacation leave.

(B) When a vendor returns to work from extended sick leave, they will resume their leave benefits.

(4) As soon as possible but at least by the thirtieth calendar day after all leave is depleted, the vendor will provide the specialist with a statement from his or her physician outlining his or her condition and possible date that he or she might be expected to be capable of fully operating the facility.

(5) The vendor will also provide the specialist with a statement as to his or her desire to retain the facility and some indication as to when he or she will once again be able to assume his or her duties of operating the facility.

(6) The vendor must provide the specialist with a physician's statement that the vendor is able to perform the duties required to manage the facility before he or she resumes the responsibility for its operation.

(7) When it becomes necessary to determine whether or not the facility should be reassigned, the decision will be made by a committee consisting of:

(A) The Vending Facility Program Administrator;

(B) The specialist who supervises the facility; and

(C) A Transfer and Promotion Committee of the State Committee of Blind

Vendors.

(c) Immediate family — Illness.

(1) Sick leave may be taken when needed because of illness in the vendor's immediate family.

(2) Immediate family is defined as:

- (A) Parents;
- (B) Siblings;
- (C) Spouse;
- (D) Children;
- (E) In-laws;
- (F) Grandparents; and
- (G) Stepchildren.

(e) Funeral.

(1)(A) Funeral leave, not to exceed five (5) days per calendar year, may be charged to sick leave for funerals of the vendor's immediate family.

(B) Immediate family is defined in subsection (c) of this section.

(2) Funeral leave of one (1) day may be taken because of deaths of other relatives and may be charged to sick leave.

(f) **Maternity.** Maternity leave will be granted on the same basis as extended sick leave (see subsection (b) of this section).

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-603. Leave other than vacation or sick leave.

(a) When a vendor must be absent from a facility for reasons other than for vacation or illness as outlined in 22 CAR § 5-602, extra help will be paid the same as vacation or sick leave upon the specialist's recommendation.

(b) **Agency business.** When a vendor is assisting in agency business or is requested to assist the program and requires him or her to be away from the facility during his or her business hours, the Vending Facility Program will provide for the substitute operation of the facility.

(c) **Jury duty.** When a vendor is requested to perform jury duty, the substitute operation of the facility will be provided at no expense to the vendor of the facility.

(d) **Training while not on suspension.** Should training for deficiency or upward mobility training involve the vendor's absence from their location, extra help will be paid for by the program and not charged to the vendor.

(e) **Administrative leave.**

(1) Effective January 1, 1994, when a vendor wishes to attend conventions, meetings, and/or seminars, he or she must request from his or her specialist the use of administrative leave.

(2) This leave will not be counted against any other form of leave.

(3) However, the vendor must pay for the substitute worker either as essential or nonessential help.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-604. Nonessential leave.

(a) A vendor may use nonessential extra help for twelve (12) days per calendar year.

(b) Use of nonessential leave beyond twelve (12) days will be subtracted from available vacation leave.

(c) If vacation is not available then the progressive discipline process in 22 CAR § 5-505 will be followed.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 7. Setting Aside of Funds

22 CAR § 5-701. Purpose for which set-aside funds may be used.

As required by the Randolph-Sheppard Amendments of 1974, Pub. L. No. 93-516, and the regulations, set-aside funds may be used for the following purposes:

- (1) Maintenance and replacement of equipment;
- (2) The purchase of new equipment;
- (3) Management services;
- (4) Assuring a fair minimum return; and
- (5) If determined by a majority vote of the licensed vendors within the program:

- (A) Establishment and maintenance of retirement or pension fund;
- (B) Health insurance contribution; and
- (C) Provision for paid vacation and sick leave.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-702. Method used to establish set-aside schedule.

(a)(1) Prior to the beginning of each fiscal year, an estimate will be made as to the amount of funds that will be required for each of the purposes for which the funds are to be set aside during the ensuing fiscal year.

(2) The estimates of the amounts required as well as the purposes for which funds are to be set aside during the fiscal year will be determined in consultation with the State Committee of Blind Vendors.

(b) The estimates will take into account expenditures made for each of the purposes during the two (2) preceding fiscal years and projections for the next fiscal year based on program needs and plans and funds available from other sources.

(c) After a determination has been made as to the amounts of set-aside funds that will be required, a set-aside charge to be levied against the net proceeds of each vendor will be established to yield the required funds.

(d) The schedule will be designed as far as practicable to prevent a greater charge for any purpose than is reasonably required with allowances for the retention of reasonable reserves necessary to ensure that each purpose can be provided for on a continuing basis.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-703. Set-aside contributions.

(a)(1) The vendor will contribute to the set-aside fund the amount of the net proceeds he or she earns during each four-week period based on the formula and set-aside schedule contained in Appendix A.

(2) The set-aside contribution will be calculated from the net proceeds of the vendor rather than from the net proceeds of the facility.

(b) When a vendor is not assigned to a facility for a full period, his or her set-aside contribution will be calculated by dividing the percentage of net proceeds contained in the formula by the number of weeks he or she is assigned to the facility.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-704. Fair minimum return.

(a)(1) The vendor will be guaranteed a fair minimum return of one hundred dollars (\$100) per week or four hundred dollars (\$400) per four-week period.

(2) He or she will receive a check of two hundred dollars (\$200), less vendor-requested deductions, at the end of the second and fourth weeks of the four-week period.

(b)(1) In instances when the facility does not produce enough income to allow the vendor to earn the amount of net profit to cover the fair minimum return during the four-week period, the amount of the difference between the net profit earned and the fair minimum return will be paid to the vendor from the set-aside fund.

(2) However, if during the fiscal year a greater amount of net profit than the fair minimum return is earned, the amount of net profit paid to the vendor will be reduced by the amount necessary to cover the amount paid to the vendor from the set-aside fund during those periods when a subsidy was necessary to guarantee him or her a fair minimum return.

(c) Should the vendor not earn enough net profits during the fiscal year to return to the set-aside fund the full amount paid to him or her from it to ensure him or her a fair minimum return, the amount still owed by the vendor will be written off as a loss to the set-aside fund and the vendor will no longer be responsible for returning it to the set-aside fund.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 8. Distribution and Use of Vending Machine Income

22 CAR § 5-801. Vending machine income on federal property.

(a)(1) Vending machine income from vending machines on federal property that has been disbursed to the Division of State Services for the Blind by a property managing department, agency, or instrumentality of the United States shall accrue to each vendor operating a vending facility on the federal property in an amount not to exceed the average net income of the total number of vendors in the state as determined each fiscal year on the basis of each prior year's operation.

(2) However, vending machine income shall not accrue to any vendor in any amount exceeding the average net income of the total number of vendors in the United States.

(3) No vendor shall receive less vending machine income than he or she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on income under this ceiling.

(b) No limitation shall be imposed on income from vending machines combined to create a vending facility when the facility is maintained, serviced, or operated by a vendor.

(c) The division will disburse vending machine income to vendors on at least a quarterly basis.

(d)(1) The division will retain vending machine income disbursed by a property managing department, agency, or instrumentality of the United States in excess of the amounts eligible to accrue to vendors.

(2) Vending machine income retained by the division will be used for:

- (A) The establishment and maintenance of retirement or pension plans;
- (B) Health insurance contributions; and
- (C) The provision of paid sick and vacation time for vendors.

(3) If it is so determined by a majority vote of the licensed vendors after each vendor has been furnished information on all matters relevant to such purposes, any vending machines income not necessary for such purposes shall be used by the division for one (1) or more of the following:

- (A) Maintenance and replacement of equipment;
- (B) Purchase of new equipment;
- (C) Management services; or
- (D) Assuring a fair minimum return to vendors.

(4) Any assessment charged to vendors shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-802. Vending machine income on state and other property.

Vending machine income on state and other property will be assigned in the same manner as vending machine income on federal property, except there is no limitation on the amount of such income that may accrue to a vendor.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 9. Repair and Replacement of Equipment/Property

22 CAR § 5-901. Maintenance and replacement.

(a) The Division of State Services for the Blind will maintain or cause to be maintained all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out or obsolete equipment as required to ensure the continued successful operation of the facility.

(b)(1) Each vendor shall:

(A) Take reasonable care of the equipment in his or her facility; and

(B) Carry out routine day-to-day maintenance procedures.

(2) Should it be determined, based on firm evidence, that equipment or fixtures have been damaged or destroyed through malicious intent, the vendor will be charged with the expense of replacement.

(3) Such behavior on the part of the vendor, if proven, will be grounds for disciplinary action.

(c) **Vending machines.**

(1) Vending machines will be purchased for locations that are established as vending machine locations only or have vending machines in service that were purchased by the Vending Facility Program on or before November 5, 2005.

(2)(A) Managers wanting to add vending machines to the location in lieu of contracting the machines must purchase the machines at their own expense.

(B) However, the program will offer assistance with the purchase of machines by way of a repayment plan.

(C)(i) The repayment plan would work as follows.

(ii) The program would purchase the machine or machines and allow the manager to pay back the total cost of the purchase over the next five (5) reporting periods, if needed.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-902. Repair and replacement of equipment — Emergency.

(a) When a major problem is created in operating the facility because of a breakdown of a piece of equipment, the vendor should call a local repair company and obtain an estimate of the cost to have the equipment repaired.

(b)(1) If the estimate is one hundred dollars (\$100) or more, the vendor should call the Vending Facility Specialist for instructions before having the equipment repaired.

(2) If the estimate is less than one hundred dollars (\$100), the vendor should have the equipment repaired.

(c)(1) The vendor should ask the repair company to send the bills to:

Division of State Services for the Blind
P.O. Box 3237
Little Rock, AR 72203

(2) The itemized bill should be marked attention to the specialist who supervises the facility.

(d)(1) If the repair company will not send its itemized bill to the division, the vendor should:

(A) Pay for the repair service from the cash drawer; and

(B) Obtain an itemized bill from the company marked "Paid".

(2) The vendor should send the itemized bill to the specialist in order to be reimbursed.

(3) The payment for the repair service will not be shown as an operating expense on the Weekly Sales Report.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-903. Vending Facility Program equipment disposal.

(a) For equipment purchased by the Vending Facility Program that has been determined is of no use to the program by program staff, the manager assigned to the

location will have first rights to the equipment for their personal use and may dispose of the items at will.

(b) Those items will be removed from the equipment inventory according to program policy.

(c) Managers will not be charged for the equipment that is being disposed of.

(d) Any questions or problems concerning the equipment disposal will be addressed by the Vending Facility Program Administrator and the President of the Arkansas Association of Blind Vending Facility Managers.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 10. Financial Information

22 CAR § 5-1001. Payroll procedures.

(a) **Processing statements from local suppliers.** Itemized bills or invoices from local suppliers of services are to be provided to the Vending Facility Specialist for the processing of purchase requests and for the specialist's verification and approval.

(b) **Weekly sales report.**

(1)(A) The weekly sales report reflects the sales and expenses of the vendor during the counting week (from the beginning of the day on Friday through the end of the day on Thursday).

(B) A weekly sales report will be completed by the vendor after the close of business on each Thursday (see weekly sales report instructions in Appendix A).

(2) Use of the weekly sales report form is recommended but is optional.

(3) The following essential information, however, must be reported to the Bookkeeping Section in writing after the close of business on each Thursday:

(A) Total supplies/operating expenses;

(B) Total purchase of stock;

(C) Total weekly deposit; and

(D) Total weekly sales.

(c)(1) Reports containing the above listed information may be submitted in typed or legible written form with appropriate accompanying invoices.

(2) Since the vendor's commissions are calculated from this report, extreme care should be taken to ensure its accuracy.

(d)(1) The weekly sales report should be sent to:

Division of State Services for the Blind
P.O. Box 3237
Little Rock, AR 72203

(2)(A) The report should be accompanied by:

(i) Invoices for the purchase of stocks and supplies during the week covered by the report; and

(ii) The deposit, which must be in the form of a:

(a) Money order;

(b) Cashier's check; or

(c) Personal check.

(B) Cash will not accompany the report and is not accepted.

(C) Cashier's checks or money orders are preferred.

(D) If more than one (1) personal check must be returned or held because of insufficient funds in a six-month period of time, personal checks will no longer be accepted from the vendor unless the vendor can provide documented evidence that the returned check or checks were not the fault of the vendor.

(3) Invoices for purchases of stock and supplies that are not accompanied by a completed weekly sales report will not be accepted by the Bookkeeping Section so long as the vendor has had adequate training in the procedure of completing the report.

(4) If it is necessary to hire assistance in preparing the weekly sales report, the necessary cost may be charged as an operating expense.

(5)(A) Personal checks should be made payable to the Vending Facility Program.

(B) The cost of cashier's checks or money orders may be charged as a miscellaneous operating expense.

(C) Receipts for the cost of cashier's checks or money orders should be included with the following week's invoices.

(6)(A) The report must reach the Vending Facility Program's Bookkeeping Section by 9:00 a.m. on the Wednesday following the Thursday of the week for which the report is applicable.

(B) A report arriving after 9:00 a.m. on Wednesday will be considered a late report.

(7)(A) The Bookkeeping Section will notify the respective Vending Facility Program Specialist of any late reports after mail delivery on Wednesday morning.

(B) The specialist will then contact the affected vendor or vendors to notify them of late reports.

(8) Reports that are consistently late through the fault of the vendor will be cause for suspension or termination.

(e) Operating expenses.

(1) Items that are needed in the day-to-day operation of the facility but are neither equipment nor consumable supplies are to be:

(A) Paid for from the cash drawer; and

(B) Charged as operating expenses on the weekly sales report.

(2) Itemized bills on these purchases will accompany the weekly sales report.

(3) Examples of these items are ashtrays, coffee pots, salt and pepper shakers, cream pitchers, napkin holders, brooms, mops, etc.

(f) Period report.

(1) The purpose of the period report is to provide the vendor with an itemized statement of all income and expenses during a four-week period (see instructions in Appendix A).

(2) This report is compiled from the:

(A) Four (4) weekly sales reports completed by the vendor during the period; and

(B) Extra-help payroll information forms completed by the specialist during the period.

(g) **Draw payroll.**

(1) Each vendor assigned to a facility is guaranteed a fair minimum return (draw).

(2)(A) Currently, the draw is one hundred dollars (\$100) per week or twenty dollars (\$20.00) per day if the vendor is not assigned to a facility for a full week.

(B) The one hundred dollars (\$100) per week draw will not be exceeded even if the facility is open for business more than five (5) days per week.

(3) The draw payroll is prepared monthly, and the vendor is paid a four-week draw on commission two (2) weeks prior to commission.

(4)(A) The vendor must inform the specialist of any changes concerning:

- (i) Name;
- (ii) Address;
- (iii) Marital status; and
- (iv) Insurance coverage.

(B) It is necessary that the vendor notify the specialist as soon as possible of a change concerning the preceding items enough in advance to permit the specialist to submit the change to the Bookkeeping Section before the next check is issued.

(5) When a new vendor is assigned to a facility, the vendor will receive the first draw check at the time the draw payroll is processed after the vendor received his or her assignment.

(6)(A) A vendor will remain on the draw payroll during holidays.

(B) A holiday is defined as a day when the establishment in which the facility is located is closed for the purpose of observing a holiday.

(h) **Lost draw, commission, or payroll checks.** If the vendor or their extra help has not received their check seven (7) days after mailing (Wednesday mailing to Wednesday of the following week), a stop payment will be made and the check reissued on Thursday.

(i) **Commissions.**

(1) Commissions are the profits of a facility after the cost of goods sold, the cost of consumable supplies, operating expenses, set-aside contributions, and the fair minimum return (drawing account) have been subtracted from the gross sales.

(2) Commissions are paid to vendors in a lump sum check for a four-week period.

(3) The vendor will receive commission payments approximately two (2) weeks after the close of the previous four-week period.

(4) The commissions are calculated from the period report (see subsection (f) of this section).

(5)(A) There will be some situations in which the payment of the minimum guarantee for lower earning periods will be offset by commissions in other periods.

(B) In order to prevent serious fluctuations in the vendor's income, arrangements will be made on an individual basis to withhold a portion of commission payments to make up for payments made as fair minimum return.

(C) The objective will be to so space the withholding from commission payments as to balance out at the end of the fiscal year.

(6)(A) Occasionally, situations may arise where excess payments have been made to a vendor during a fiscal year.

(B) Such overpayments will be recovered through prorated deductions from commissions during the next fiscal year.

(7) In those situations where the net earnings of the stand do not exceed the minimum guarantee, the deficit will be erased.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1002. Inventory gains or losses.

(a)(1) When a vendor leaves a facility, whether by transfer or promotion, an inventory will be taken to determine its value.

(2) If the value of the inventory is greater than the value of the inventory when the vendor was assigned to the facility and there are no other losses to

completely offset the gain in value, the amount of the increased value will be paid to the vendor as profit from the Special Programs Fund.

(3)(A) If the value of the inventory when the vendor leaves the facility is less than the value of the inventory when he or she was assigned to it and if there is not an increase in cash-on-hand equal to the difference, the vendor must repay the loss in value to the Special Programs Fund.

(B) The loss may be repaid:

(i) With unpaid commission, if any;

(ii) By profits from the facility to which he or she is being transferred or promoted; or

(iii) The combination of both methods.

(b)(1) When a vendor leaves the Vending Facility Program, an inventory will be taken to determine its value.

(2) If the value is greater than the value of the inventory when he or she was assigned to the facility, the amount of the increased value will be paid to the former vendor from the Special Programs Fund.

(3) If the value of the inventory and cash-on-hand is less than the value of the inventory when the vendor was assigned to the facility, the amount of the deficit is due and payable by the vendor to the Special Programs Fund.

(4) Notification of the amount of repayment will be given to the vendor in writing by the Vending Facility Program.

(c) Inventory changes.

(1) When an inventory has been processed on a manager for any reason, the manager will receive a copy of the inventory and have thirty (30) calendar days, after receipt, to resolve any questions regarding the validity and/or accuracy of the inventory.

(2) After the thirty-calendar-day period is over, the inventory cannot be changed.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1003. Federal, FICA, and state income tax liability.

(a) For income tax purposes, licensed blind vendors are considered self-employed persons under federal and state income tax laws and regulations.

(b)(1) Effective January 1, 1988, the Vending Facility Program will not be responsible for withholding FICA, federal, and state income taxes from licensed blind vendors' draw and commission.

(2) It shall be the responsibility of the licensed blind vendor to comply with all applicable federal and state income tax laws concerning personal income.

(c)(1) Licensed blind vendors wishing specific information concerning federal income tax and Social Security taxes (FICA) should contact their nearest United States Internal Revenue Service office.

(2) Licensed blind vendors wishing specific information concerning state income tax rules should contact the Revenue Division of the Department of Finance and Administration.

(d) Draw and commission checks will be sent to licensed blind vendors as per the check mail out schedule, and all such income will be taxable under federal and state laws and regulations.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Codification Notes. "FICA" means the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.

22 CAR § 5-1004. Insurance.

(a)(1) Beginning November 1, 1989, vendors currently licensed and placed on location will qualify for fringe benefits coverage.

(2)(A) A reimbursement of fifty dollars (\$50.00) per month will be made for major medical or medical supplement insurance.

(B) This includes Medicare supplements but not Medicare or Medicaid policies.

(3) Monthly, quarterly, or annual proof of coverage must be submitted.

(4) Quarterly payments will be issued, and insurance changes must be reported to the office immediately.

(b) Licensees will not receive this insurance benefit until they are assigned a location.

(c) Vendors are required to provide proof of coverage in one (1) of the following ways before the fifty-dollar payments will be issued:

(1)(A) Have your insurance company send a letter to the Vending Facility Program office detailing your current coverage under a major medical or Medicare supplement insurance policy and that the Vending Facility Program office will be notified should this policy expire.

(B) This option will allow continuous payment of the fringe reimbursement check; or

(2)(A) Send a copy of the previous month's premium payment receipt or canceled check to the program office using the previous month's statement for the current month's reimbursement.

(B) This option will provide payment for the time period shown on the receipt whether it be:

(i) Monthly;

(ii) Quarterly; or

(iii) Annually.

(d)(1) The program office will not make changes in any type of insurance coverage until they have received a written request to do so from the vendor.

(2) The program office, after receiving a written request, shall acknowledge the requested change in writing.

(e) **Life insurance.**

(1) USABLE Life Insurance coverage is available to vendors assigned to facilities within the program and their dependents.

(2) The vendor is responsible for part of the premium.

(3) The premium is payroll deductible from the vendor's draw checks.

(f) **Vendors in displaced status (22 CAR § 5-502).** Effective July 1, 1986, those vendors in displaced status shall be eligible to have their health insurance premiums paid partially from the set-aside fund the same as assigned vendors for a period not to exceed one (1) year from the date of displacement.

(g) **Cancer insurance.**

(1)(A) Cancer insurance is available to vendors and their families through the program from an insurance provider if they qualify.

(B) Due to the many changes that take place in insurance from year to year, dependents are defined in the policy handbook.

(C) For further information on dependents, contact the program office.

(2) This premium is also deductible from the vendor's draw check.

(3)(A) A claim form is provided with the policy.

(B) If additional claim forms are needed, the vendor should contact the program office.

(h) **Liability insurance.**

(1) Vendors are required to carry liability insurance to protect the vendor, the facility, and the program against property damage and claims filed by injured parties resulting from the operation of the vending facility.

(2) This policy is obtained by the program and covers all legal costs, medical expenses, and personal and property damage subject to the following features:

(A) One million dollars (\$1,000,000) "all risk" and extends to products liability as well as premises;

(B) This coverage includes liability, equipment, and inventory and is on a "replacement cost" basis;

(C) Full loss of earnings; and

(D)(i) Money and securities, ten thousand dollars (\$10,000).

(ii) Inside and outside, two thousand dollars (\$2,000).

(iii) Deductible, two hundred fifty dollars (\$250).

(3) The cost of the insurance for each facility is based on the:

- (A) Type of operation;
- (B) Location of facility; and
- (C) Annual sales of facility.

(4) The annual cost for each facility will be:

- (A) Prorated over the thirteen (13) periods per year; and
- (B) Deducted from the facility's profits as an operating expense each

period.

(5) At the end of each year, adjustments will be made based on any changes in the type of operation of the facility.

(6) The vendor shall notify their specialist at once should any claims or losses arise that are covered by the liability insurance.

(i) Workers' compensation insurance.

(1) All vendors are required to carry workers' compensation insurance.

(2) This insurance covers all full-time, part-time, occasional, or nonessential extra help employees.

(3) The cost of this insurance will be:

- (A) Prorated over the thirteen (13) periods per year; and
- (B) Deducted from the facility profits as an operating expense.

(4) Workers' compensation claims.

(A) When the extra help person is injured on the job or entering or leaving the work premises, the licensed blind vendor shall immediately contact the Vending Facility Specialist to report the accident and begin appropriate filing of workers' compensation claims.

(B) Under no circumstances should a vendor delay the filing or reporting of a job-related accident.

(C) If a vendor is unable to contact the vendor's respective specialist, the program office should be contacted and either the program accountant or the Vending Facility Program Administrator made aware of the accident.

(D) Failure to report a job-related accident within a twenty-four-hour period of time will be grounds for disciplinary action.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1005. Retirement contributions.

(a)(1) The Vending Facility Program will contribute toward the development of individualized retirement packages for licensed blind vendors in the Arkansas Randolph-Sheppard Program.

(2) Funding for contributions will be provided by profits from the interstate highway vending machines.

(b) Vendors are considered as self-employed individuals and must buy their own retirement packages.

(c) Criteria is outlined below:

(1) Eligibility.

(A) Participant must be a licensed blind vendor or displaced vendor in accordance with the federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq.

(B) Beginning with October 1, 2000, participants must have completed one (1) year of seniority to receive contributions.

(C) Seniority will be calculated using October 1 of each successive year;

(2) Proof of eligibility.

(A) The vendor will have thirty (30) calendar days from issuance of contributions to send in proof of use in a valid retirement package (e.g., IRA) to the program.

(B) Proof must be provided each year.

(C)(i) Failure to provide such proof will terminate the vendor's eligibility for retirement contributions, and vendor must return the last contributions received from the program that do not have proof of use in a valid retirement package.

(ii) Should the vendor not return the last contributions, the amount of the contribution will be withheld from the vendor's draw and/or commission.

(iii) Also, the vendor will be subject to disciplinary action in accordance with 22 CAR § 5-505;

(3) Contributions.

(A) Contributions will be paid to eligible licensed vendors by or on October 15 each year.

(B) Contributions will start at two hundred dollars (\$200) for one (1) year seniority and will be increased each additional year by twenty-five dollars (\$25.00) (e.g., two (2) years seniority equals two hundred twenty-five dollars (\$225)).

(C) Contributions will be shown as income on the vendor's 1099 for the year in which they were paid.

(D) After June 30 and before September 30, the Vending Facility Program Administrator and Vending Facility Program Accountant shall perform an annual review of the period between Period 1 (October 1) and Period 10 (June 30) of the current year and determine if sufficient funds have been collected to provide for an additional, one-time percentage and/or bonus payment increase in the overall retirement contributions for disbursement to eligible managers.

(E)(i) If funds are available, eligible managers will receive the increase on their retirement benefit when disbursed.

(ii) If funds are not available, no additional, one-time percentage increase will be disbursed;

(4) Exceptions.

(A) Exceptions will apply if the Internal Revenue Service does not allow contributions by the vendor due to age or other restrictions.

(B) In this case, subdivision (c)(5)(B) of this section will not apply.

(C) Contributions will be provided to the vendor in accordance with this policy; and

(5) Termination from participation. The vendor is no longer eligible to participate in or receive retirement contributions when conditions exist as listed below:

(A) Vendor is not licensed to operate a facility on the date when retirement contributions are issued, including the date of issuance;

(B) Vendor fails to provide proof of retirement package within thirty (30) days after receiving the retirement contribution;

(C) Retirement contributions will not be issued to beneficiaries or vendor estates; and

(D) Retirement contributions will not be prorated.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Codification Notes. "IRA" means individual retirement account.

Subpart 11. Administrative Review, Evidentiary Hearing, and Arbitration Procedures

22 CAR § 5-1101. Administrative review procedures — Procedures.

(a)(1) A vendor or his or her designee (who may be a member of the State Committee of Blind Vendors) may request in writing within fifteen (15) working days of the occurrence of the action, an administrative review of an action by the Division of State Services for the Blind arising from the operation or administration of the Vending Facility Program with which the vendor is dissatisfied.

(2) This review will be made only by a member or members of the administrative staff of the division who have not participated in the action in question.

(b)(1) The administrative review will be held at a time and place convenient to the vendor requesting the review.

(2) The administrative review will be conducted within fifteen (15) working days after receipt by the division of such a request.

(c)(1) If needed, transportation, reader services, or other communication services will be arranged for the vendor by the division.

(2) If the administrative review is held during regular operational hours of the location, the program office will provide relief at no cost to the vendor.

(d) Documentation of the written request for the administrative review and actions and decisions resulting from the review shall be maintained as part of the official record of the administrative review process.

(e) When an administrative review does not resolve a dispute to the satisfaction of the vendor, the vendor may request a full evidentiary hearing.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1102. Full evidentiary hearing procedures.

(a)(1) When a vendor is dissatisfied with an action by the Division of State Services for the Blind arising from the operation or administration of the Vending Facility Program, the vendor may file a complaint with the division requesting a full evidentiary hearing.

(2) The complaint shall identify one (1) or more disputed issues to be resolved in an evidentiary hearing.

(3)(A) Complaints concerning actions taken by the division that are required by law are not appropriate for resolution through an evidentiary hearing since evidentiary hearings cannot settle issues of law.

(B) Adherence of the division to its policies and consistency of application of its policies are examples of issues of fact that, if disputed, can be resolved through the evidentiary hearing process.

(b) Procedures.

(1) Vendors shall be informed in writing of their rights to a full evidentiary hearing and of the procedures for obtaining it at the time they are licensed.

(2) If a vendor requests an evidentiary hearing, such a request must be made within fifteen (15) working days after the adverse decision of an administrative review.

(3)(A) A vendor must request an evidentiary hearing in writing.

(B) This request must be transmitted to the Commissioner of the Division of State Services for the Blind personally or by certified mail, return receipt requested.

(C) This request may be transmitted through the State Committee of Blind Vendors.

(4) A vendor is entitled to legal counsel or other representation at his or her own expense or through legal services available in the community.

(5)(A) Reader services or other communication services will be arranged for the vendor should he or she request them.

(B) Transportation costs and per diem shall be provided to the vendor if the evidentiary hearing is in a city other than the legal residence of the vendor.

(6)(A)(i) The hearing will be held at a time and place convenient and accessible to the vendor.

(ii) A hearing held during regular working hours and located at the state office of the division may be deemed as a convenient time and location.

(B) The hearing will be scheduled by the division within fifteen (15) working days of the receipt of the request unless the division and the vendor mutually agree, in writing, to some other period of time.

(C)(i) The vendor shall be notified in writing of the time and place of the hearing and of his or her right to be represented by legal or other counsel.

(ii) This notice shall be sent to the vendor by way of certified or registered mail.

(D) The vendor shall be provided with a copy of the hearing procedures and other relevant information necessary to enable him or her to prepare his or her case for the hearing.

(7)(A) A panel consisting of three (3) persons will hear the evidence.

(B) The vendor shall select one (1) representative, and the division will select a representative.

(C) The vendor's representative and the agency's representative shall then select the third member of the panel.

(D) The third person selected shall then serve as panel chairperson.

(8)(A) This panel shall:

(i) Conduct the hearing;

- (ii) Avoid delays;
- (iii) Maintain order; and
- (iv) Make sufficient record of the proceedings for a full and true

disclosure of the facts and issues.

(B) This panel:

- (i) Shall have all powers authorized by law; and
- (ii) May make all procedural and evidentiary rulings necessary for the

conduct of the hearing.

(C) The hearing shall be open to the public at the discretion of the vendor.

(9) Both the vendor and the division are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examinations and cross-examinations of witnesses as may be required for a full and true disclosure of all facts affecting the issues.

(10)(A) All papers and documents introduced into evidence at the hearing shall be:

- (i) Filed with the presiding officer; and
- (ii) Provided to the other party.

(B) All documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments presented on either side of the issue.

(11)(A) A transcript shall be made of the oral evidence and shall be made available to the parties.

(B) The division shall:

- (i) Pay all transcript costs; and
- (ii) Provide the vendor with a copy of the transcript.

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

(13)(A) The decision of the panel shall set forth the principal issues and relevant facts presented at the hearing and the applicable provision in:

- (i) Law;

(ii) Regulation; and

(iii) Agency policy.

(B) The decision shall:

(i) Contain findings of fact and conclusions with respect to each of the issues and the reasons for such conclusions;

(ii) Set forth any corrective actions necessary to resolve the issues in dispute;

(iii) Be made within fifteen (15) working days after receipt of the transcript; and

(iv) Be mailed promptly to the vendor and the division.

(14) If the vendor is dissatisfied with the decision rendered after a full evidentiary hearing, he or she may request that an arbitration panel be convened by filing a complaint with the United States Secretary of Education.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1103. Arbitration procedures.

(a) The policies for the convening of an ad hoc arbitration panel provided for by Sections 5(a) and 6 of the Randolph-Sheppard Act Amendments of 1974 and 34 C.F.R. § 395.6(e) and § 395.13 and the procedures governing the designation of the arbitration panel members, the notices to be given, the conduct of the arbitration panel members, the conduct of the arbitration including the authority and duties of the panel and the rights of the parties, the decision making by the panel, and the rights of appeal from the decision, are as follows.

(b) **Definitions.** As used in this section:

(1) "Act" means the Randolph-Sheppard Act Amendments of 1974, Title II of Pub. L. No. 93-516;

(2) "Party" or "parties" means one (1) or both, as the context indicates, of the complainant blind vendor and the Division of State Services for the Blind;

(3) "Regulations" means the regulations at 34 C.F.R. § 395.1 et seq.; and

(4) "Secretary" means the United States Secretary of Education.

(c) Communications.

(1) All communications, including originals and copies of required notices, pleadings, motions, petitions, and briefs, in connection with and related to the arbitration, between the parties, between a party and the Secretary of the Department of Education, between a party and the arbitration panel, between the parties or the arbitration panel and the arbitration clerk or the Division for the Blind and Visually Impaired of the Rehabilitation Services Administration of the United States Department of Education, shall be in writing transmitted by registered or certified mail, return receipt requested.

(2)(A) A copy of the complaint shall be sent by the blind vendor to the Division of State Services for the Blind.

(B) Thereafter, all communications and sufficient copies thereof will be transmitted to the arbitration clerk in the Division for the Blind and Visually Impaired who will:

(i) Maintain the official docket of the arbitration proceeding; and

(ii) Transmit promptly the original or the copies to the parties and the arbitration panel, as may be appropriate, and, as may be necessary, to the Division for the Blind and Visually Impaired.

(d) Complaint by blind vendor.

(1) If a blind vendor, after he or she has been provided a full evidentiary hearing by the Division of State Services for the Blind as provided in Section 5(a) of the Randolph-Sheppard Act and 34 C.F.R. § 395.6(e) and § 395.13(a), is dissatisfied with any action taken or decision rendered as a result of such hearing, he or she may file a written complaint with the United States Secretary of Education.

(2) The complaint shall set forth:

(A) The action or actions arising from the operation or administration of the Vending Facility Program by the Division of State Services for the Blind that constituted the basis for the request by the blind vendor for a full evidentiary hearing;

(B) The date and place of the full evidentiary hearing;

(C) The decision rendered as a result of the hearing;

(D) Any action taken as a result of the hearing;

(E) The specific part or parts of the decision rendered as a result of the hearing with which the blind vendor is dissatisfied and the reasons for such dissatisfaction;

(F) The specific action or actions taken as a result of the hearing with which the blind vendor is dissatisfied and the reasons for such dissatisfaction; and

(G) A statement of the relief that the blind vendor is seeking to obtain from the Division of State Services for the Blind.

(3) Any written decision rendered as a result of the full evidentiary hearing shall be attached to the complaint as an exhibit.

(e) Arbitration clerk.

(1) Upon receipt of the complaint by the United States Secretary of Education, it will be forwarded promptly to the designated arbitration clerk in the Division for the Blind and Visually Impaired.

(2) Within seven (7) days of receipt by the arbitration clerk, the complaint will be docketed and its receipt acknowledged to the blind vendor and the Division of State Services for the Blind.

(f) Review and disposition of complaint.

(1) After the complaint has been docketed, it will be reviewed by the Division for the Blind and Visually Impaired.

(2) No later than thirty (30) days after acknowledgment of the complaint, the parties will be notified of the results of the review as follows:

(A) If the complaint alleges sufficient relevant and material facts that, if proved, would entitle the blind vendor to any of the relief sought and if any of the relief sought is within the authority of the arbitration panel to grant, the parties will be notified that an ad hoc arbitration panel will be convened;

(B) If the complaint fails to allege sufficient relevant and material facts that, if proved, would entitle the blind vendor to any of the relief sought or if none of

the relief sought is within the authority of the arbitration panel to grant, the blind vendor will:

(i) Be so notified in writing together with a statement of the reasons therefor; and

(ii) Be given an opportunity to amend the complaint within fifteen (15) days from the date of the notice;

(C) If the blind vendor does not file a timely amendment to the complaint, the parties will be notified in writing that the complaint is dismissed;

(D)(i) If the blind vendor files a timely amendment to the complaint, the parties will be notified of the sufficiency of the amended complaint expeditiously (normally not to exceed fifteen (15) days) after receipt of the amendment.

(ii) If it is determined that the amended complaint alleges sufficient relevant and material facts and that any of the relief sought is within the authority of the arbitration panel to grant, the notice will inform the parties that an ad hoc arbitration panel will be convened.

(iii) If it is determined that the amended complaint fails to allege sufficient relevant and material facts or that none of the relief sought is within the power of the arbitration panel to grant, the notice will inform the parties that the complaint is dismissed;

(E) If the complaint does not allege facts that indicate dissatisfaction with all or part of the decision rendered as a result of a full evidentiary hearing, the notice will inform the parties that the complaint is dismissed;

(F) If it is determined that the complaint is specious or that it has been filed solely for the purpose of harassment, the notice will:

(i) Inform the parties that the complaint is dismissed; and

(ii) Contain a statement of the reasons for the conclusion reached and the action taken;

(G)(i) If for the purpose of any decision under this section the Division for the Blind and Visually Impaired deems it necessary to obtain information in addition to

that at hand, such information will be requested through the arbitration clerk from the parties.

(ii) The request will state a reasonable period for the furnishing of the information, and the determination will be made no later than fifteen (15) days after its receipt; and

(H) If the complaint is dismissed for any of the reasons set forth in subdivision (f)(2)(C) of this section, subdivision (f)(2)(E) of this section, or subdivision (f)(2)(F) of this section, such dismissal shall constitute a final agency action.

(g) Designation of arbitration panel.

(1)(A) Within fifteen (15) days from the date of the notice informing the parties that an arbitration panel will be convened, each party shall designate one (1) panel member and promptly notify the arbitration clerk of the designation, including the name and address of the designee.

(B) Within thirty (30) days from the date of the notice, the two (2) panel members designated by the parties or by the United States Secretary of Education under subdivision (g)(2) of this section shall designate as the third member of the panel a person who is not an employee of the Division of State Services for the Blind, Arkansas Rehabilitation Services, or the Department of Human Services shall serve as panel chairperson.

(2) If the United States Secretary of Education, through the arbitration clerk, is not notified promptly by the parties of the timely designation of the panel members, and by the panel chairperson of his or her timely designation as such by the panel members, the United States Secretary of Education will make such designation or designations on behalf of the parties or the first two (2) panel designees.

(h) Answer to complaint.

(1) Within thirty (30) days from the date of the notice informing the parties that an arbitration panel will be convened, the Division of State Services for the Blind may file an answer to the complaint with the arbitration clerk.

(2) Failure to file an answer will not be deemed an admission of the allegations in the complaint, nor result in the default of the Division of State Services for the Blind.

(3) The issues for arbitration and the positions of the parties thereon may be identified at the prearbitration conference.

(i) Notice of arbitration and prearbitration conference.

(1)(A) The arbitration panel, after consulting with the parties, shall schedule a reasonable date, time, and place for the arbitration, which shall not be later than forty-five (45) days after the designation of the panel chairperson.

(B) The panel chairperson shall notify the parties and the arbitration clerk of the date, time, and place of the arbitration at least thirty (30) days prior to the time scheduled.

(2)(A) The arbitration panel shall schedule a prearbitration conference with the parties to settle or simplify the issues between the parties and to encourage them to resolve the issues in whole or in part.

(B) If the panel so requires, stipulations or proposed exhibits shall be exchanged at the prearbitration conference or otherwise prior to the arbitration.

(C) The panel chairperson shall give the parties and the arbitration clerk reasonable notice of the date, time, and place of the prearbitration conference.

(j) Conduct of the arbitration.

(1) The panel chairperson shall preside over the arbitration.

(2) The arbitration panel shall be responsible for the order, conduct, and decorum of the proceeding and shall have the authority to take all appropriate steps necessary to ensure an orderly, expeditious, and fair arbitration, including, but not limited to, the following:

(A) To change the date, time, and place of the arbitration upon due notice to the parties and the arbitration clerk, including the authority to continue the proceeding in whole or in part;

(B) To consider matters that may aid in the expeditious disposition of the arbitration;

(C) To regulate participation of the parties and require them to state their position with respect to the issues in the arbitration;

(D) To administer oaths and affirmations;

- (E) To rule on motions and other procedural items;
- (F) To regulate the course of the arbitration and conduct of counsel

therein;

- (G) To examine witnesses;
- (H) To receive, rule on, exclude, or limit evidence;
- (I) To fix the time for filing motions, petitions, briefs, or other items in

matters pending before it; and

(J) To make a final agency decision for purposes of Chapter 7 of Title V, United States Code.

(3) The arbitration panel does not have the authority to compel by subpoena the production of:

- (A) Witnesses;
- (B) Papers; or
- (C) Other evidence.

(k) **Rights of parties.** The parties may:

(1) Appear by counsel or other authorized representatives in all arbitration proceedings;

(2) Agree to stipulations as to facts that will be made a part of the record;

(3) Make brief opening statements at the arbitration, which shall be limited to describing the party's position and what it intends to prove;

(4) Present relevant and material evidence on the issues in the arbitration;

(5) Present witnesses who will testify under oath or affirmation and who then must be available for cross-examination by the other party;

(6) Present oral arguments at the arbitration; and

(7) Submit written briefs, proposed findings of fact, and proposed conclusions of law after the close of the presentation of evidence in the arbitration.

(l) **Rules of evidence.**

(1) Technical rules of evidence shall not apply to the arbitration, but rules or principles designed to ensure production of the most credible evidence available and to

subject testimony to test by cross-examination shall be applied by the panel chairperson.

(2) A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination.

(3) The panel chairperson may exclude irrelevant, immaterial, or unduly repetitious evidence.

(4) All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(m) **Depositions.**

(1) If the panel chairperson determines that the interest of justice would be served, he or she may authorize the taking of depositions only if all parties are afforded an opportunity to participate in the taking of the depositions.

(2) If the Division of State Services for the Blind requested the deposition, it shall arrange at its expense for a transcript of the deposition and shall, upon request of the blind vendor, furnish such party with a copy of the transcript.

(3) If the blind vendor requested the deposition, the arbitration clerk will arrange for the services of the reporter and for paying for such services, including the costs of the transcript and necessary copies.

(n) **Un-sponsored written material.**

(1) Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the arbitration.

(2) These data are not deemed part of the evidence or record in the arbitration.

(o) **Official transcript and record.**

(1)(A) The arbitration clerk will designate the official reporter for all arbitration proceedings, including the taking of depositions at the request of the blind vendor pursuant to subsection (m) of this section.

(B) Copies of transcripts may be obtained by the Division of State Services for the Blind and the public at rates not to exceed the maximum rates fixed by the contract between the arbitration clerk and the reporter.

(C) The blind vendor may obtain through the arbitration clerk a copy of the transcript to be charged as a cost of the arbitration pursuant to subsection (q) of this section.

(D) Upon notice to the parties, the panel chairperson may authorize corrections to the transcript that involve matters of substance.

(2)(A) The transcripts of testimony, including transcripts of depositions introduced as evidence, and any pleadings, motions, stipulations, exhibits, briefs, and rulings by the panel:

(i) Shall be filed with the arbitration clerk; and

(ii) Except for the correspondence section of the docket, shall constitute the exclusive record for decision.

(B) If, however, a panel ruling or decision rests on official notice of a material fact not appearing in evidence in the record, the parties are entitled, on timely request, to an opportunity to show the contrary.

(p) Arbitration briefs and decision.

(1)(A) The panel chairperson shall fix the time for filing briefs by the parties following the conclusion of the taking of evidence in the arbitration proceeding, and, if permitted, reply briefs.

(B) The briefs may contain proposed findings of fact and conclusions of law.

(2) The arbitration panel shall render its decision within thirty (30) days after the expiration of the time for filing briefs as fixed pursuant to subdivision (p)(1) of this section.

(3)(A) The decision of the arbitration panel shall be in writing and contain a statement of the rationale, including findings of fact and conclusions of law, upon which it is based.

(B) It shall be filed promptly with the arbitration clerk, who shall serve it promptly on the parties.

(4) The decision of the arbitration panel is final and binding on the parties except as provided in subdivision (p)(5) of this section.

(5) The decision of the arbitration panel is:

(A) The final agency action on the matters adjudicated by it; and

(B) Subject to appeal and review as such pursuant to Chapter 7, Title V, United States Code.

(6) The decision of the arbitration panel is a matter of public record and will be published in the Federal Register by the United States Secretary of Education through the arbitration clerk.

(q) **Costs of arbitration.** The United States Secretary of Education will pay the reasonable costs of arbitration proceedings hereunder, which may include:

(1) The salaries of panel members, not to exceed that of GS-18 if they are not otherwise employed by the state or federal governments;

(2) Travel expenses and per diem costs for panel members, if not otherwise paid for from federal funds;

(3) The costs of the services of the official reporter and the official transcripts under contract with the arbitration clerk, not to exceed the reasonable costs for such services in the locality in which performed and furnished;

(4) Travel expenses and per diem costs for witnesses unavailable at the locality of the arbitration proceeding and whose testimony is:

(A) Deemed reasonably necessary by one (1) of the parties; and

(B) Approved by the arbitration chairperson; and

(5) If the blind vendor is unable to obtain the services of counsel without cost either through a local or state legal services program or through an interested association or organization, reasonable fees for legal services not to exceed one hundred dollars (\$100) per day and required travel expenses without written approval of the arbitration clerk.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Subpart 12. Accounting

22 CAR § 5-1201. Equipment inventory balancing.

(a) The equipment inventory asset list will be balanced to the general ledger yearly.

(b) Copies of the balanced information will be filed and sent to the Department of Human Services Managerial Accounting.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1202. Visa card procedures.

(a) **Note.** These funds are derived from the proceeds of the manager's and vending machine income solely and are not related to a state or federal MOF.

(b) Before making a purchase, the Vending Facility Program Specialist should complete VFP23CC form by:

(1) Put in writing:

(A) Requested merchandise;

(B) Date requested;

(C) Where purchase is to take place; and

(D) Approximate price of purchase;

(2) Secure program accountant's or Vending Facility Program Administrator's approval; and

(3)(A) Take approval to assigned program staff member for release of Visa card.

(B) The assigned staff member will make the purchase with the Visa card.

(c) After making the purchase, the specialist should return the Visa card and all related receipts to the assigned program staff member.

(d) At no time should the program Visa card be used for purchases not related to the program.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

22 CAR § 5-1203. Accounting general description.

(a)(1) The Vending Facility Program maintains a double-entry record of financial transactions utilizing an automated accounting system (Peachtree/Sage) to process daily, monthly, quarterly, and annual accounting functions.

(2) The ledgers are established by funding sources.

(3) They are:

- (A) Set-aside (SA);
- (B) Special programs (SP); and
- (C) Highway program (HW).

(4) These funds are:

- (A) Owned and controlled by the program managers and the ECM;
- (B) Not considered state or federal funds; and
- (C) Not subject to the rules and regulations of state and federal funds.

(b) A brief explanation of the fiscal information that is contained in these books of account, the source of that information, and method and frequency of posting is presented in the following sections.

(c) The accounting system is designed to systematically classify and accumulate financial data utilizing a formal chart of accounts, which is presented later in this section.

(d) The major accounting functions that are to be accomplished by the system and the internal accounting controls that may be achieved are discussed.

(e) Accounting functions.

(1) The major accounting functions are discussed in the order they generally occur.

(2) All checks arriving in the program accounting section each day are listed on the "Receipt of Checks for (date)", the VFP-1a, before being recorded on the VFP-2, VFP-37, or DHS 1022 CR Log.

(f) Cash receipts control — Stand sales.

(1)(A) Considered chronologically, the first major accounting function involves receiving, recording, and depositing cash.

(B) All cash receipts are classified as either "sales" (from stand operations) or "miscellaneous" (all other) receipts.

(2)(A) The initial accountability for cash received from sales is established when the mail envelopes containing the stand manager's weekly sales reports are opened.

(B) The reports are normally accompanied by a check from the stand manager with the amount of the check representing gross profits on sales.

(C) The amount of cash transmitted by the stand manager should be the difference between cash taken in from sales and cash paid out for stock, supplies, and miscellaneous operating expenses less petty cash.

(3)(A) The first step in establishing accountability for this cash is to record the amount of cash received from each stand manager on a daily Cash Report, VFP-2, and form DHS-1022 Cash Receipts Log (9-1-11).

(B) This is accomplished by the person responsible for opening the mail, and the completed cash reports, together with Weekly Sales Report of Manager, VFP-6, become the source documents for recording cash information in other books of original entry.

(C) The daily cash report also provides a deposit total, which should agree with the amount shown on the validated bank deposit slip.

(4)(A) At no time should actual cash or money be accepted by the program.

(B) If a manager/person brings actual cash or money for their deposit or payment to the program, they are to be advised to exchange the cash for a money order and bring it back to the program for acceptance as payment or deposit.

(C) The program does not accept actual cash or money.

(g) Verification of sales reports.

(1)(A) An accounting function related to cash from stand sales involves testing the accuracy of amounts shown on manager's weekly sales reports.

(B) Since these reports are the source document for a significant amount of the financial information that is ultimately recorded in the formal accounting system, report accuracy must be continuously emphasized and tested.

(2) Check mathematical accuracy of amounts entered on the report form.

(3) Examine invoices, tickets, and other documentary evidence of cash paid out to determine its allowability and authenticity.

(4)(A) Run adding machine tape on each category of payout (report lines 2 and 3) and compare tape totals to amounts shown on the sales report.

(B) When differences are discovered, the correcting adjustment will be made to sales.

Example: Assume that the invoices submitted as evidence of stock purchased add up to one hundred dollars (\$100) less than the amount shown for sales (line 6). This correction is made by pen on the report form and requires no formal accounting entries. However, to understand its effect, the correction as a journal entry would be:

Debit Sales	\$100.00
Credit Purchases	\$100.00

(5) **Posting cash sales information.** The recording of cash receipts and sales information in the accounting system is accomplished as follows:

(A) From daily cash reports (validated bank deposit slip attached) the summary total of cash received is posted to the automated cash journal;

(B)(i) After the cash amounts shown on the stand managers' weekly sales reports have been totaled for accuracy, the information shown on the reports is posted on the automated four (4) weekly period reports.

(ii) The accumulated totals from the period reports are automatically linked to the sales report register for the period; and

(C) The sales report register is then used to post to the automated general ledger for each period.

(h) Cash control — Miscellaneous cash receipts.

(1)(A) Miscellaneous cash receipts (receipts other than those accompanying the managers' weekly sales reports) are recorded on the form DHS-1022 Cash Receipts Log (9-1-11) and handled as listed in 22 CAR § 5-1001 et seq.

(B)(i) Vending machine revenue is usually in the form of a check from the vending machine company that maintains the vending machine.

(ii) The accountant has personal knowledge of which stand manager should receive credit for the check and makes a notation on the check to advise the receipting process.

(C)(i) Receipts from the sale of equipment or other sources that are not credited to stand managers are also classified by the accountant and recorded.

(ii) Then a daily bank deposit is developed.

(2)(A) When the accountant has all miscellaneous receipts, the action taken also depends on the kind of revenue involved.

(B)(i) For receipts that are to be credited to a stand as stand sales, the accountant records the amount received on the daily cash report as if the money had been received directly from the stand manager.

(ii) The money is combined with other cash from stand sales and included in the daily bank deposit.

(iii) Thereafter, the accounting treatment for this type of revenue is no different than that given all other stand sales.

(C)(i) For other miscellaneous receipts that are not credited to stand managers, the accountant includes the money in the daily bank deposit.

(ii) The accountant records the amount and source of such receipts on Miscellaneous Cash Receipts, VFP #37, and the form DHS-1022 Cash Receipts Log (9-1-11).

(iii) The deposits are made by the program supervisor or Vending Facility Program Administrator for separation of duties.

(i) **Cash disbursements.**

(1)(A) The functions of controlling, classifying, and recording cash disbursements involves three (3) major types of expenditures:

(i) Extra help payrolls;

(ii) Commission and draw payments to stand managers; and

(iii) Payments to vendors for goods received or services rendered.

(B) These three (3) types of expenditures are discussed separately under their respective subdivisions.

(2) **Managers' draw payroll.**

(A)(i) The source document for the draw payroll is the draw payroll worksheet.

(ii) This worksheet contains master payroll information for all managers.

(iii) It is used by the payroll accounting clerk to record changes that may be required for the current payroll.

(B) The back-up documentation for amounts paid on any draw payroll is the Draw Payroll Worksheet, VFP-9.

(C) It is the duty of the accountant to accumulate this documentation and use it as a basis for making any changes on the payroll worksheet that may be required.

(D) When the accountant has changed the worksheet to agree with the supporting documentation just described, he or she prepares a Vending Stand Payroll Control Sheet, VFP-12, which shows summary payroll information and dollar control totals.

(E) The worksheet and VFP-12 are then entered on the program's computer for processing.

(F)(i) The VFP-12 is used to test the accuracy of the computer output.

(ii) This output includes printing the individual draw checks, which are mailed from the program office.

(G)(i) The accountant posts draw payroll information to the automated general ledger as follows.

(ii) The summary totals from computer processed payroll detail listing are recorded in summary form.

(iii) A typical posting could be:

Debit: Draw	\$XXX.XX
Credit: Payroll Deduction Payable	\$XXX.XX
Cash	XXX.XX

(3) **Managers' commissions.**

(A)(i) Stand managers are paid their earned commission every four (4) weeks.

(ii) The payments represent their share of stand profits for the latest operating period.

(B) The original source document for a commission payroll is the Weekly Sales Report, VFP-6, referred to under the subsection on cash receipts control, subsection (f) of this section.

(C) When the amounts shown on each stand manager's weekly report has been verified, the amounts are transferred to the sales report register.

(D) Information entered on the Weekly Sales Report that is necessary for arriving at the amount of commission payable includes:

(i) Operating expenses;

(ii) Stock purchases;

(iii) Total deposit;

(iv) Amount of draw for the same period (usually four hundred dollars (\$400));

(v) Amount of extra help to be charged against stand profits, including applicable taxes;

(vi) The balance of these items represents commission earned or loss for the period; and

(vii) Prior period information that could result in adjustment to the current commission earned includes prior period losses or set-aside payback.

(E)(i) The net amount of commissions payable for the current period is then entered from the sales report register on the commission payroll worksheet.

(ii) The completed payroll worksheet and Vending Stand Payroll Control Sheet, VFP-12, which shows predetermined totals, are then entered on the program's computer for processing.

(iii) The processing includes printing individual commission checks, which the program mails to stand managers along with a copy of their period report.

(F) As in the case of draw payrolls, the computer output for commission payrolls includes a detailed payroll listing and a check register of amounts paid.

(4) Vendor payments — Supplies and/or services.

(A) The source documents for vendor payments include:

(i) Copy of vendor's invoice; and

(ii) Copy of the purchase verification form, VFP-23/VFP 23CC.

(B) When an invoice for goods or services is received, it is given to the specialist who either placed the order or the supervisor/manager who placed the order.

(C) To authorize payment, the specialist and/or the administrator must sign a completed bid sheet or Purchase Verification Form, VFP 23/VFP 23CC, processed and sent to the program accounting department.

(D) With the vendor's invoice and signed verification for supporting documentation, payment is made on a voucher/check, which is prepared in the accounting office.

(E)(i) The original voucher/check is mailed to the vendor.

(ii) Two (2) copies of the voucher/check are retained.

(iii) One (1) is filed with copies of supporting documentation, and the other is filed in a numerical backup binder.

(F) Only the program accountant can issue checks for payment.

(G) Special-issued checks are checks completed by hand and must have the "pay to" completed by the accountant and an invoice to match the check amount.

(H) The accountant records these cash disbursements as follows:

(i) Checks drawn are posted to the automated ledger from the copies of checks; and

(ii) The number and amount of each check drawn is posted to cash disbursements.

(5) Extra help payrolls.

(A)(i) Extra help payrolls are processed and paid every two (2) weeks.

(ii) If the cost of extra help for a manager is justified, it may be paid from program funds.

(B)(i) The source documentation for extra help payrolls begins with an Employee Time Sheet, VFP-1, for each person who worked as extra help during the two-week period being processed.

(ii) The information sheet, VFP-1, which shows hours, days, or weeks worked and the rate of pay, is submitted by the specialist who has responsibility over the stand where the extra help employee worked.

(iii) The specialist's signature on an information sheet is the authorization to process payment.

(C)(i) When payment is authorized, the payroll accounting clerk transcribes key data from the information sheet to the automated system.

(ii)(a) The system prepares the individual checks using prenumbered three-part check/voucher forms (Exhibit C).

(b) The original goes to the employee, the second carbon is filed in a numerical backup binder, and the last copy is filed with payroll listing.

(iii) These payroll check/voucher forms are distinguishable from vendor checks by both their color and numbering sequence.

(iv) Consistent with the practice of the four-week report period for sales, the payroll clerk, on a memorandum record, combines two (2) extra help payrolls into one (1) reporting period and separately maintains all related payroll documentation for each four-week period.

(D) The payroll system posts information to employee's individual earnings records and makes the periodic reports for Social Security and income taxes withheld at the intervals required by law.

(E)(i) The accountant enters extra help payroll information in the automated cash disbursement.

(ii) This is the same procedure as was described for vendor payments and other (SP) payroll processing.

(F) The payroll totals are gathered on the Data Entry Form, VFP-38, for filing.

(j) Fixed assets and stock inventory.

(1) Another important accounting function involves the recording of each purchase of stock inventory or fixed assets, as well as maintaining the accumulated total value and location of all assets currently on hand.

(2) For fixed assets (equipment or furniture and fixtures), the source documents for recording a purchase are:

(A) The vendor's invoice;

(B) A copy of the payment check; and

(C) Evidence of a formal bid and acceptance, if required.

(3) For noncapital inventory purchases, formal bidding is not required.

(4)(A) The purchases of assets and inventory are posted to the automated accounting package by fund (SA, SP, HW) from the copies of the checks issued.

(B) These amounts should balance with the purchase verifications.

(k) Liabilities.

(1) Keeping a record of amounts owed (accounts payable) is also an accounting function.

(2) For the program, accounts payable usually include:

(A) Rent for a few stands; and

(B) Social Security and payroll taxes withheld from employees' earnings.

(3) Since most program operations are on a cash basis, the number of accounts payable is small and there is no need for a subsidiary accounts payable ledger.

(4)(A) The source document of taxes withheld and Social Security matching are the formal payroll listings.

(B) Rent payable is recorded from the rent report (Exhibit D).

(C) The amount of rent is based on a percentage of gross sales.

(D) Any rent expense is deducted from the stand manager's gross profit and ultimately reduces his or her commission.

(5) From the sales report register, the accountant makes entries for rent expense and rent payable in the automated general ledger.

Example:

Debit: Rent Expense \$XXX.XX

Credit: Rent Payable \$XXX.XX

(l) **Equity.** The program automatically posts gains and losses to the books.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Codification Notes. "ECM" means elected committee members.

22 CAR § 5-1204. The general ledger.

(a)(1) The most important and permanent record of all financial information is maintained in the general ledger.

(2) This ledger contains all of the accounts necessary to reflect the:

- (A) Financial status of the Vending Facility Program; and
- (B) Degree of success of its business enterprises.

(b) Although the operating accounts are closed to profit and loss at least annually, the real accounts provide continuous accounting control for assets, liabilities, and equity, and they are maintained permanently.

(c)(1) The information recorded in the general ledger is a summary of more detailed information from the source documents in the accounting process.

(2) These documents and amounts from them are posted directly to the general ledger.

(d)(1) To obtain the summary information, the accounting section runs the automated accounting reports needed for totals and processing.

(2) The audit trail is then established.

(3) Entries are coded and processed through the automated system.

(e) The following is a summary of information entered each period, monthly, and quarterly by the accountant into the general ledger:

(1) Cash disbursements (entered each period from the white copy of checks):

- (A) Split checks by program (SA, SP, HW);
- (B) Post expenses to proper accounts and list the check number in the

"reference" column on the general ledger; and

(C)(i) Debit all expenses.

(ii) The account numbers are on the check stub;

(2) Payroll (entered each period on Peachtree):

- (A) Post from "Payroll G/L Transaction Register";
- (B) Post only payrolls with checks dated in the period;
- (C) Post by programs (SA, SP, SP-302);
- (D) Post only these transactions:

(i) Net pay;

(ii) Gross pay;

(iii) Federal withholding;

- (iv) Arkansas withholding; and
 - (v) Employee FICA; and
- (E) In "description" field post payroll dates;
- (3) Draws and commissions (entered each period):
 - (A)(i) Post one (1) draw, one (1) commission, and insurance amounts for the respective payrolls.
 - (ii) Must use three (3) payroll numbers; and
 - (B) Entries are SA only;
- (4) Miscellaneous cash receipts (entered each period in deposit folder):
 - (A) Work up by program (SA, SP, and HW);
 - (B) Use cash deposits for the period, not necessarily dated in the period;
 - (C) Total MCR deposits (SA, SP, and HW);
 - (D) Post receipts to proper accounts; and
 - (E) Credit all receipts;
- (5) General journal entries (entered each period):
 - (A) Create entries as needed;
 - (B) Post directly to ledger by program (SA, SP, and HW); and
 - (C) Make good use of "description" field and give as much detail as possible;
- (6) Sales report registers (entered each period (SA and SP)):
 - (A) Balance reports; and
 - (B) Post directly to proper accounts;
- (7) Monthly payroll taxes (federal and state):
 - (A) Create worksheet from payrolls;
 - (B) List by program (SA, SP);
 - (C) Mail Arkansas taxes to State of Arkansas; and
 - (D) Deposit federal taxes through EFT; and
- (8) Quarterly payroll taxes (SUTA):
 - (A) Create worksheet for all programs (SA, SP, and SP-302);
 - (B) Print Peachtree 941 State Wage Report; and

(C) Multiply wages by applicable percentage.

(f) Program bid procedures and process.

(1) The program will use the Department of Human Services Administrative Procedures Manual as a general guide for processing bids, purchases, and payments, as adjusted to meet the program accounting department's requirements and internal forms and publications for processing purchases and payments.

(2) See procedures and forms at the end of this subpart.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Codification Notes. "EFT" means electronic funds transfer.

"FICA" means the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.

"HW" means highway program.

"SA" means set aside.

"SP" means special programs.

"SUTA" means State Unemployment Tax Act.

22 CAR § 5-1205. Records retention schedule.

(a) The Arkansas General Records Retention Schedule, 25 CAR pt. 60, will be used by staff to process all Vending Facility Program records.

(b) Publication 14 in DHS Share is printed below as the current guide for record retention.

(c) This is the OIT Records Retention rule, 25 CAR pt. 60.

Authority. Arkansas Code §§ 22-3-131, 25-10-204.

Appendix A. Vendor Operating Procedures Forms

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/169/22CARpt.5Appendix.pdf>