# Chapter HSS 260

## SUPERVISED BUSINESS ENTERPRISES OPERATED BY BLIND PERSONS

HSS 260.01 Authority and purpose
HSS 260.02 Definitions
HSS 260.03 Committee of operators
HSS 260.04 Access by operators to program information
HSS 260.05 Grievance
HSS 260.06 Licensees
HSS 260.07 Selection of suitable locations
HSS 260.08 Selection of operators
HSS 260.09 Setting up the business enterprise
HSS 260.10 Operating the business enterprise
HSS 260.11 Set-aside funds
HSS 260.12 Corrective action
HSS 260.13 Other reasons for suspending or terminating a license or transferring an operator to a less-demanding business
HSS 260.14 Operator's agreement

**HSS 260.01 Authority and purpose.** This chapter sets forth standards and guidelines for administration by the department of a program of supervised business enterprises operated by blind persons. The department establishes new business enterprises and, as feasible, develops, expands and upgrades existing enterprises which are not providing an adequate income to operators or not providing a level of service meeting customer demand. The chapter is promulgated pursuant to rule-making authority conferred by s. 227.11 (2) (a), Stats., and implements s. 47.03 (4) to (8), Stats., as well as the Randolph-Sheppard Act, as amended, 20 USC 107.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; reprinted to correct error, Register, January, 1984, No. 337; am. Register, April, 1987, No. 376, eff. 5-1-87.

**HSS 260.02 Definitions.** As used in this chapter:

**(1)** "Active participation" means a formal, ongoing process involving the mutual exchange of information and advice in regard to planning and review of proposed program policies, standards and procedures, with the understanding that only the department has the responsibility to administer the program consistent with applicable statutes, regulations and this chapter, and that the right of the committee to actively participate does not affect that responsibility.

**(2)** "Blind" has the meaning prescribed in s. 47.01, Stats.

**(3)** "Business enterprise" means a vending facility or other small for-profit enterprise operated by or to be operated by one or more blind persons supervised by the department.

**(4)** "Co-manager" means an operator who shares the duties and responsibilities of operating a business enterprise with another operator or other operators.

**(5)** "Committee" means a committee of operators of supervised business enterprises, the members of which are elected to represent all licensees in the state.

**(6)** "Competency" means fulfilling the requirements of this chapter.

**(7)** "Contract" means the agreement between the department and the owner or occupant of the premises where the business enterprise is located.

**(8)** "Department" means the department of health and social services.

**(9)** "Division" means the department's division of vocational rehabilitation.

**(10)** "Existing management deficiencies" means deficiencies in operational requirements rather than in individual operator performance, which may occur when the operator is working at full capacity but is unable to fulfill all operational requirements of the business.

**(11)** "Fair value" means the price acceptable to the department and the operator, or, when the 2 parties do not agree, the value as appraised by any person agreed to by both parties, in either case taking into account the condition of the equipment, its remaining useful life, location, installation and removal costs and other relevant factors permitted by law, to arrive at a depreciated price.

**(12)** "Gross sales" means all revenues received from the operation of the business enterprise, including those assigned to the operators by the department.

**(13)** "License" means a written document issued by the department to a blind person, authorizing the blind person to operate a business of the type named in the document.

**(14)** "Licensee" means a person eligible to become the operator of a business enterprise.

**(15)** "Managerial duty list" or "duty list" means a comprehensive descriptive statement of the co-managers' shared and individual duty assignments and mutual performance expectations.

**(16)** "Management need" means the number of operators necessary to maintain or improve efficiency, profits or food handling and safety.

**(17)** "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, inservice training and other services provided on a systematic basis to support and improve business enterprises.

**(18)** "Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine or other income accruing to an operator, after deducting the cost of the sales and other expenses but excluding set-aside charges required to be paid by the operator.

**(19)** "Operator" means a blind licensee who is operating a supervised business enterprise on federal or other property.

**(20)** "Operator's agreement" means the document issued by the department that authorizes an operator to conduct business at a specific location.

**(21)** "Permit" means the agreement with the controlling body or organization of the federal building or other property in which the business enterprise is located.

**(22)** "Randolph-Sheppard Act" means 20 USC 107.

**(23)** "Set-aside" means the money collected by the department from operators, based on a percentage of net proceeds, to be used for purposes stated in s. HSS 260.11 (4).

**(24)** "Vendor-owner" means a business enterprise operator who has exercised the option to purchase the stock and equipment of the business enterprise.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; renum. (4) to (20) to be (5) to (9), (11) to (14) and (17) to (24), cr. (4), (10), (15), (16); Register, May, 1994, No. 461, eff. 6-1-94.

**HSS 260.03 Committee of operators. (1)** There shall be an elected committee of operators to actively participate with the department in the administration of the business enterprise program. The department shall call and conduct elections of committee members. Only operators may nominate candidates and only operators may vote for committee members. All operators shall be given the opportunity to vote for committee members.

**(2)** The committee shall have not less than 5 members nor more than 9 members, all elected by the operators. Elections shall be held each year. Each member shall serve a term of 2 years, except that at the first election at least 2 members shall be elected for 1 year terms.

**(3)** The committee shall meet at least 4 times a year to carry out its responsibilities.

**(4)** The department shall communicate with the committee and receive communications from the committee on matters within the purview of the committee.

**(5)** Committee responsibilities shall include but are not limited to:

(a) Active participation with the department in its work of making major administrative decisions and policy and program development decisions affecting the overall administration of the business enterprise program;

(b) Receiving and transmitting grievances to the department at the request of blind licensees and serving as an advocate for these licensees in connection with their grievances;

(c) Active participation with the department in the development and administration of a system for transfer and promotion of operators;

(d) Active participation with the department in development of operator training and retraining programs;

(e) Sponsoring, with the assistance of the department, meetings and instructional conferences for operators within the state;

(f) Active participation with the department, on at least an annual basis, in establishing the amount of set-aside funds needed for the coming year and the subsequent charges to arrive at that amount. The department shall maintain adequate records to support the reasonableness of the charges for each purpose for which the funds are spent;

(g) Active participation with the department in updating and making other revisions in the format of the operator's agreement and in this chapter. (See appendix)

**(6)** The committee may delegate any of its work to subcommittees or individual committee members.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.04 Access by operators to program information. (1)** In accordance with the Randolph-Sheppard Act, each operator under this part shall be permitted access to all program and financial data relevant to the operation of the supervised business enterprise program, including quarterly and annual financial reports, provided that this disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information.

**(2)** At the request of an operator, department staff shall arrange a convenient time to assist in the interpretation of such financial data.

**(3)** If the department cannot provide the requested information in a routine manner, the department may charge for the services involved in obtaining the requested data on an actual cost basis.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.05 Grievances.** Grievances of operators, other licensees and applicants for licenses under this chapter shall be processed in accordance with the following procedure:

**(1)** Any operator or other affected party dissatisfied with any action or decision of the department may file a written grievance with the committee under s. HSS 260.03 (5) (b).

**(2)** If the aggrieved party is dissatisfied with the outcome of the committee review, the aggrieved party or the committee may forward the written grievance to the division for administrative review by a staff member of the division. The division staff member shall arrange a mutually convenient time and place for the administrative review, and shall notify the grievant of the outcome of the review by certified mail within 10 working days following the review.

**(3)** If the aggrieved party is dissatisfied with the outcome of the administrative review, the aggrieved party may, within 30 working days after the date of the written notice of the outcome of the review, file a written request for a full evidentiary hearing before a panel appointed by the division administrator consisting of persons knowledgeable about rehabilitation of the blind but who are not staff members of the division. The panel shall make a recommendation to the division administrator who shall notify the grievant of his or her final decision by certified mail within 10 working days after receipt of the panel's recommendation.

**(4)** If the aggrieved party continues to be dissatisfied with the decision under sub. (3), the individual may, within 30 working days after the date of the notification of the fair hearing outcome, file a complaint with the secretary of the U.S. department of education who will convene an ad hoc arbitration panel to make a final and binding decision on the parties. (See 34 CFR 395.13)

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.06 Licensees. (1)** ELIGIBILITY. The following are eligibility requirements for new licensees in the business enterprise program:

(a) The applicant shall be a citizen of the United States.

(b) The applicant shall be blind.

(c) The applicant shall have adequate training to operate the business enterprise efficiently and in accordance with this chapter, as evidenced by successful completion of a training program or equivalent experience, in either case as approved by the department. In offering training opportunities, preference shall be given by the department to persons who need employment.

(d) The applicant shall be otherwise capable of operating the business enterprise, as determined by the department.

**(2)** ISSUANCE OF LICENSE. (a) A license shall be issued by the department for an indefinite period subject to suspension or termination.

(b) A license is not transferable.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.07 Selection of suitable locations. (1)** DETERMINATION. (a) The department may establish a business at a particular location only if establishment of the enterprise at that location is likely to contribute to the development of significant economic opportunites for the blind and is likely to provide for the most productive use of program assets.

(b) The determination under par. (a) shall be made on the basis of an evaluation of relevant factors disclosed and recorded as the result of a survey of the location. Factors to be evaluated shall include population, traffic, competition, continued availability of the location, type of premises and potential return on investment.

**(2)** EFFECT OF LOSS OF SALES. (a) *Closing or converting the business.* If the business enterprise established under sub. (1) is adversely affected by factors beyond the control of the department or of the operator so that there is at least a 35% decline in sales at that location from one 3-month period to the next or a reduction to zero sales in a shorter period of time, the department may close that business enterprise or convert it to a vending machine operation and may establish a new business enterprise under sub. (1) at a different location. The amount of loss shall be reviewed and verified by the department.

(b) *Transfer following loss of sales.* 1. The operator affected by par. (a) may request transfer to another location, and, subject to par. (c), shall be given preference in the selection process under s. HSS 260.08 when the next 2 program vacancies occur, regardless of income or location of the program vacancies within the state, except that preferential transfer rights shall not apply to seasonal operators.

2. If the operator affected by par. (a) elects not to transfer to one of the next 2 available openings, his or her priority for transfer shall be exhausted and further transfer shall be in accordance with s. HSS 260.08.

(c) *Transfer dependent on satisfactory performance and ability to handle new tasks.* An operator may transfer under this subsection only if his or her past performance is judged satisfactory by the department with the active participation of the committee and with consideration of the views of building management in the affected location, and if the department finds that the operator is able to perform the anticipated new tasks. The new tasks may result from a change in management responsibilities, increased scope of the business, change in number and type of employes or change in overall job duties. If an otherwise competent operator lacks the skills needed in the new enterprise, the department shall help the operator acquire those skills through an appropriate retraining program.

(d) *Probationary period following transfer.* An operator who transfers to a new location under this subsection shall serve a probationary period as described in s. HSS 260.08 (6).

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; r. and recr. Register, April, 1987, No. 376, eff. 5-1-87.

**HSS 260.08 Selection of operators. (1)** DEPARTMENT RESPONSIBILITY. The department shall select operators for business enterprises from among persons licensed to operate business enterprises. The licensee deemed to be best suited for an available business enterprise shall be selected. The department may appoint a committee of operators and department staff to make a recommendation about the best suited licensee for the available business enterprise.

**(2)** NOTIFICATION OF VACANCIES. The department shall notify all licensees in writing of vacancies in business enterprises throughout the state with instruction for applying to fill the vacancies.

**(3)** ORDER OF PREFERENCE. In selecting an operator for a vacancy, the department shall first consider applicants who are currently operators and thereafter applicants who are licensees but not currently operators, except that preference shall be given to a licensee who was an operator and has requested transfer to a new location in accordance with s. HSS 260.07 (2) (b).

**(4)** METHOD OF NOTIFYING A SUCCESSFUL APPLICANT. The department shall notify the successful applicant in writing by return receipt requested mail of its offer of a vacant operator position to that individual. Within 5 working days after receipt of an offer, the successful applicant shall notify the department in writing by return receipt requested mail that he or she accepts or refuses the offer. Refusal of an offer is final and irrevocable. An applicant who changes his or her mind after accepting an offer and who was an operator at another location at the time of acceptance is not permitted to recover the operator position vacated upon acceptance of the new position unless all affected licensees, the committee and the department agree.

**(5)** INVENTORY. When a new operator takes over a business enterprise, the department and the operator or the operator's representative shall immediately conduct a physical inventory of equipment, accessories and merchandise.

**(6)** PROBATIONARY PERIOD. All operators shall serve a probationary period of 6 months, including operators who have been promoted or transferred. The department may shorten the probationary period to 3 months following an operator's satisfactory management of the business enterprise during that period, or the department may lengthen the probationary period to one year.

**(7)** CO-MANAGEMENT. (a) *Definition.* In this subsection, "assessment" means an examination of operational requirements that include but are not limited to operating hours or days, volume of merchandise sold, number of peak sales periods per day, complexity and extensiveness of product line and inventory, number of employes, total labor hours per day, ratio of employe hours to management hours, sales generated per employe, required management skill level, the scope of managerial responsibilities and stipulations of agreement with building management.

(b) *Need.* 1. A co-manager position may be established only when department staff, with participation of the committee, determine that an additional operator is necessary to satisfy the management needs of the enterprise.

2. Department staff shall determine management need on the basis of an assessment of operational requirements undertaken with participation of the committee.

3. A new facility shall have an assessment before any vacancy is posted. If the need for co-management is uncertain, the vacancy announcement shall indicate that co-management may be needed in the future.

4. A facility that is operational shall have an assessment when department staff determine that an assessment is appropriate or when an operator requests an assessment.

(c) *Criteria for co-management.* 1. At an existing facility, a co-manager position may be added when department staff determine it is needed for facility management, as identified in one of the following ways:

a. Through an assessment done in accordance with par. (b); or

b. Through an assessment after department staff have determined that existing management deficiencies threaten the ongoing operation of the business.

2. A co-manager position may be eliminated only when that position is vacant and department staff, with participation of the committee, determine that the management need of the business is satisfied without it. This assessment shall indicate the need for any additional employe hours with the elimination of the co-manager position. The position may not be eliminated if additional employe hours exceed 9 hours per day or 45 hours per week.

(d) *Managerial duty list.* 1. When a co-manager position is announced, the announcement shall contain an existing or proposed managerial duty list. The duty list may not be revised while the position is vacant.

2. For a facility opened after June 1, 1994 the approved co-managers shall submit the managerial duty list to the department within 60 days after the opening date of the business. Department staff may, within 30 days after receiving the duty list, and with the advice of the committee, reject the duty list or require that it be revised. If a co-manager disagrees with the action of the department, he or she may file a grievance in accordance with s. HSS 260.05.

3. For a facility that is in operation on June 1, 1994 the approved co-managers shall submit the managerial duty list to the department within 60 days after June 1, 1994.

4. Co-managers of a business that has had a duty list previously approved by the department may revise the duty list, subject to approval of the department. The revised duty list shall reflect a new co-manager's previous work experience and shall be further revised as his or her skill level progresses. The committee may participate in the approval process at the request of an affected operator or the department. Within 30 days after receiving a revised duty list, department staff may reject that list or require additional changes in it. If a co-manager disagrees with the action of the department, he or she may file a grievance under s. HSS 260.05. Pending a decision on the grievance, the original duty list shall remain in effect except for those items that are not in dispute.

(e) *Equal responsibility and equal income sharing.* 1. Co-managers shall be equally responsible for business operations and for complying with this chapter.

2. Co-managers shall equally share the income of the business unless they and the department agree on a different distribution or if the effect of equal sharing is to reduce the percentage or share of the income of the business received by a co-manager who was a co-manager on June 1, 1994.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; am. (1) and (3), renum. (4) and (5) to be (5) and (6), cr. (4), Register, April, 1987, No. 376, eff. 5-1-87; cr. (7), Register, May, 1994, No. 461, eff. 6-1-94.

**HSS 260.09 Setting up the business enterprise. (1)** EQUIPMENT. (a) *Department responsibility.* The department shall provide each business enterprise with suitable equipment and shall arrange for all normal repair and replacement of this equipment except for an enterprise which has vendor owned equipment.

(b) *Title to equipment.* 1. Department ownership. All rights, title to and interest in business enterprise equipment, other than equipment owned and maintained by vending machine companies or suppliers, is vested in the department unless the operator exercises the option to purchase the equipment as provided in subd. 2.

2. Vendor ownership. a. All rights, title to and interest in business enterprise equipment may be vested in an operator, as authorized by s. 47.08, Stats., and the Randolph-Sheppard Act, provided that the operator has competently operated the business enterprise under supervision of the department for one year, and if the organization responsible for the building in which the business enterprise is located grants permission. The vendor-owner shall remain under supervision of the department.

b. The business enterprise equipment shall be sold at a fair value based on the condition and serviceability of the equipment at the time of sale. Merchandise shall be sold at the original purchase price. Total payment shall be due to the department when the bill of sale is signed.

c. A bill of sale between the operator and the department shall contain the terms and conditions of the sale, in accordance with this chapter and the conditions of any permit or contract governing the premises on which the business enterprise is located. Upon completion of the sale the operator shall be responsible for maintaining, repairing, and replacing all business enterprise equipment, and the set-aside charge for these services is suspended. In the event the operator fails to meet all obligations to provide proper maintenance, repair and replacement of equipment, the department may elect to make the necessary repair or replacement and charge the vendor-owner for such repair or replacement.

d. The department retains a first option to repurchase within 90 days the equipment and stock in the event the vendor-owner dies, ceases to be a licensee, transfers to another business enterprise, or requests in writing purchase by the department. If the option to repurchase is not exercised, the department shall, if requested, provide a written statement to the vendor-owner giving the reasons for not exercising the option.

(c) *Receipt of equipment.* Equipment furnished to the operator or removed by the department from the operator shall be acknowledged by a receipt signed by the operator or his or her agent or by the department's representative, as is appropriate.

(d) *Care of equipment.* Equipment furnished by the department shall be used only for the purpose stated in the operator's agreement. The operator shall exercise reasonable care in the use and maintenance of that equipment in order to keep it in good condition.

(e) *Change or addition of equipment.* The operator shall not add to or change any piece of equipment without prior written approval of the department.

**(2)** INITIAL STOCK. (a) *Department responsibility.* 1. The department shall provide each business enterprise with an adequate initial stock, including merchandise, supplies, and operating capital, as determined by the department to be adequate to begin operation. This level shall be adjusted annually by an index determined by current wholesale prices for such stock.

2. The department shall reimburse the operator if he or she leaves a particular location due to transfer, resignation or dismissal, for any usable and salable stocks and supplies above the current adjusted level. The operator shall reimburse the department if the closing inventory is less than the current adjusted level. In the event of an operator's death, the estate shall be reimbursed accordingly or the estate shall reimburse the department. The department shall determine the amount to be paid to or collected from an operator or an operator's estate within 60 calendar days after completion of the closing inventory. Payment or collection shall occur within 30 days after determination of the amount to be paid or collected.

(b) *Operator responsibility.* 1. The operator shall acknowledge initial stock furnished by the department by signing a receipt to that effect.

2. The operator shall maintain a stock level and amount of operating capital adequate to conduct the business enterprise efficiently and effectively, as determined by the department.

**(3)** BONDING. All operators except vendor-owners shall be bonded and shall be assessed an annual bonding charge by the department.

**(4)** INCOME FROM VENDING MACHINES. (a) Income from vending machines on state or other property within reasonable proximity to and in direct competition with a business enterprise shall be assigned to the operator of such business enterprise. A vending machine is in reasonable proximity to and in direct competition with a business enterprise if it vends articles of a type authorized in the permit and is so located that it attracts customers who would otherwise patronize the business enterprise.

(b) Income from vending machines not within reasonable proximity to or in direct competition with a business enterprise may be used for management services for the business enterprise program.

(c) In all cases, income from vending machines shall be distributed as provided under the Randolph-Sheppard Act and 34 CFR 395.8.

**(5)** INSURANCE. (a) Every business enterprise shall have adequate liability and fire insurance at levels established by the state of Wisconsin office of risk management.

(b) If the department obtains the necessary insurance coverage, the operator shall reimburse the department.

(c) Unless otherwise agreed, the first premium for insurance coverage for each new business enterprise shall be paid by the department as a part of the initial installation costs.

**(6)** LICENSES AND PERMITS. (a) Each business enterprise shall have all licenses and permits required by law for the conduct of the business enterprise.

(b) If the department obtains the required licenses and permits, the operator shall reimburse the department for them.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.10 Operating the business enterprise. (1)** OPERATOR BEHAVIOR. (a) *General.* The operator shall:

1. Perform faithfully and to the best of his or her ability all duties necessary to the proper conduct and operation of the business enterprise;

2. Operate the business in compliance with all applicable provisions of federal, state, and local law;

3. Operate the business in accordance with this chapter and the permit or contract with the controlling body or organization of the building or property in which the business is located; and

4. Cooperate with duly authorized representatives of the department in the performance of their official responsibilities.

(b) *Prohibited behavior by operator and employes.* The operator or any employe of the operator, while engaged in the pursuit of duties and responsibilities as operator on the premises where the business enterprise is located or elsewhere, shall refrain from any action or conduct which may bring or reflect discredit to the business enterprise operation, to the owner or manager of the premises where the business enterprise is located or to the department's business enterprise program. Such prohibited action or conduct shall include, but shall not be limited to, the following:

1. Use of alcoholic beverages, controlled substances as defined in ch. 161, Stats., or other drugs unless prescribed by a physician for the user;

2. The presence or possession of alcoholic beverages, except as these relate to the business, on the premises where the business enterprise is located;

3. Conduct offensive under current community standards;

4. The use of language blatantly offensive to a reasonable person;

5. Embezzlement;

6. The making of false reports; or

7. The commission of a felony or a misdemeanor.

(c) *Prohibited absences.* Except as otherwise provided in this chapter, absentee management, supervision and operation of the business enterprise and the realization of its net proceeds by the operator in absentia for other than brief, non-routine periods is prohibited.

(d) *Relief periods.* The operator may establish a schedule of relief periods for employes during business hours, subject to the approval of the department.

(e) *Vacations.* The operator may take a maximum of 30 working days vacation each calendar year after notifying the department of the name, address, and telephone number of the relief operator.

(f) *Illness.* Necessary absence of the operator due to personal illness is allowable if the absence does not exceed one period of 30 consecutive working days in any calendar year, or 2 or more periods totaling not more than 45 working days in any calendar year. The department may extend the allowable period of absence where special circumstances exist.

**(2)** EMPLOYMENT PRACTICES. (a) *Operator responsibility.* The operator shall:

1. Employ and compensate such employes as are necessary to the effective and efficient operation of the business enterprise;

2. Employ and compensate a relief operator to insure continuous operation of the business enterprise during an absence of the licensed operator;

3. Comply with all applicable labor and civil rights laws;

4. Limit the persons employed to preclude unnecessarily excessive costs;

5. Terminate the employment of any person whose continued employment is detrimental to the business enterprise;

6. Keep and preserve legally required detailed records of payroll and payroll deductions; and

7. Observe the following order of preference in hiring qualified persons:

a. Severely disabled applicants.

b. Non-severely disabled applicants.

c. Non-disabled applicants.

(b) *Department responsibility.* The department shall:

1. Assist each operator in identifying qualified disabled persons to be considered for employment; and

2. Notify the operator of any situation arising from the operator's employment practices which is detrimental to the operation and requires prompt and immediate correction.

**(3)** CASH BASIS AND CREDIT. (a) The operator shall transact all business on a 30 calendar day cash basis and shall pay all obligations promptly when due.

(b) The operator shall pay and discharge any obligations within 30 days after written notice from the department that:

1. The operator is delinquent in the payment of any business accounts; or

2. The department has received a complaint concerning monies due a business creditor of the operator, or has been asked to provide assistance in the collection of these monies.

**(4)** MERCHANDISE. Only merchandise of a class or type authorized by the permit or contract shall be sold by the operator or the operator's employes.

**(5)** DISPLAY OF LICENSE. The operator shall at all times conspicuously display at the business enterprise location the license issued by the department and shall neither cause nor permit the license to be covered or removed.

**(6)** RECORDS AND REPORTS. (a) *Operator responsibility.* The operator shall:

1. Establish and maintain a business checking account in a depository commercial bank chartered to do business in the state of Wisconsin, deposit all business receipts and revenues therein, and insure that business and personal funds shall not become mingled in the account;

2. Keep and preserve a full and complete record of all receipts and disbursements required by internal revenue service guidelines;

3. Prepare and submit to the department, on or before the 5th working day of each month, a sales report for the previous month along with all bills paid that month;

4. Make available to the department during regular business hours all records and books of account for the purpose of review or audit; and

5. Provide or report to the department in the form prescribed information about the business enterprise required by this chapter or otherwise requested by the department.

(b) *Department responsibility.* The department shall assist the operator in the establishment of proper books of account and record-keeping procedures.

**(7)** PAYMENT OF FEES. The operator shall, within 30 days from the date of invoice, send all fees to the department which are owed to the department for the preceding month. Fees may be paid by check or money order made payable to the department's business enterprise program and sent to the address on the invoice.

**(8)** PENALTY FOR LATE REPORT OR FEES. (a) All reports required pursuant to sub. (6) (a) received after the due date shall be assessed a late penalty charge as determined annually by the department in consultation with the committee.

(b) All fees required pursuant to s. HSS 260.11 received after the due date shall be assessed an interest charge of 1% per month (12% per annum) of the unpaid balance.

(c) If the reports or fees are late due to reasons beyond the operator's control, the penalty may be waived by the department upon receipt of the set-aside fees or fully completed reports accompanied by a statement justifying the lateness.

**(9)** STATE SALES TAX. (a) Every operator shall obtain a Wisconsin seller's permit in the operator's name.

(b) If the department obtains the seller's permit, the operator shall reimburse the department for the permit.

(c) The operator shall pay in full within prescribed time limits all state sales tax due and shall comply with the provisions of ss. 77.51 and 77.52, Stats.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.11 Set-aside funds. (1)** REQUIREMENT. The department shall collect, maintain and administer funds from the net proceeds of the operation of each business enterprise, including vendor-owned enterprises, in accordance with provisions of this section.

**(2)** AMOUNT. (a) Funds that the department requires be set aside shall be computed on the basis of a percentage of the individual operator's net proceeds for a given month. The department may each year reconsider and change that percentage to ensure that set-aside funds are sufficient for the uses made of these funds. Set-aside charges for vendor-owned enterprises shall be at a reduced rate to reflect vendor-owner responsibility for maintenance, repair and replacement of all business enterprise equipment.

(b) The department shall bill operators each month for the set-aside charge.

**(3)** ACCOUNTING. Set-aside funds maintained by the department shall be accounted for in accordance with generally accepted principles of fund accounting.

**(4)** USES. Set-aside funds may be expended only for the following purposes:

(a) To maintain and replace equipment;

(b) To purchase new equipment;

(c) To pay for management services;

(d) To assure a fair minimum return to operators; and

(e) To establish and maintain retirement or pension funds, health insurance contributions and provisions for paid sick leave and vacation time.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.12 Corrective action. (1)** CONDUCT OR PERFORMANCE SHORTCOMINGS. If the operator fails to conduct the business enterprise in compliance with the operator's agreement or to maintain reasonable performance levels as demonstrated by comparison with prior periods of operation in the same location or other business enterprises of a similar type, the department shall review the evidence with the committee and solicit the committee's recommendations for corrective action.

**(2)** CORRECTIVE ACTION ALTERNATIVES. Corrective action alternatives available to the department include but are not limited to :

(a) Specific or additional management and supervision services;

(b) Suspension of the license for a period not to exceed 30 days;

(c) Demotion of the operator to a less-demanding business enterprise; and

(d) Termination of the license.

**(3)** NOTICE. (a) Exchange as provided in par. (b), no suspension, demotion or termination shall be made until the department gives notice to the operator, by registered or certified mail, with return receipt requested, of facts or conduct which warrant the intended action, and the operator has been given an opportunity to show compliance with all lawful requirements for the retention of the license.

(b) The department may immediately suspend an operator's license, followed by notice and the opportunity to contest the action, if in the judgment of the department there is a substantial probability that the behavior of the operator will result in harm to the health, safety or welfare of other persons.

**(4)** GROUNDS FOR SUSPENSION. An operator's license may be suspended for a period not to exceed 30 calendar days, except in cases of extended illness or incapacity, on one or more of the following grounds:

(a) Failure to operate the business enterprise in compliance with the operator's agreement;

(b) Failure to maintain acceptable performance levels after being provided the opportunity for additional training; or

(c) Refusal to accept needed training without cause.

**(5)** GROUNDS FOR DEMOTION. An operator may be demoted to a lesser-demanding business enterprise on one or both of the following grounds:

(a) Recurring noncompliance with terms of the operator's agreement; or

(b) Repeated failure to maintain acceptable levels of performance in operation of the business enterprise.

**(6)** GROUNDS FOR TERMINATION. An operator's license may be terminated for one or more of the following reasons:

(a) Withdrawal of the operator without notice;

(b) Withdrawal of the permit or contract by the controlling body or organization of the building or property in which the business enterprise is operating, due to fault of the operator;

(c) Decision by the department after recommendation of the committee that an enterprise is not being operated in accordance with the law or this chapter or within the terms and conditions of the agreement between the department and the operator;

(d) Any willful or malicious destruction of any equipment furnished to the operator;

(e) Willful falsification of any record or report required to be kept or made by the operator; or

(f) Misconduct specified in s. HSS 260.10 (1).

**(7)** INFORMING THE OPERATOR OF RIGHTS. In the event of suspension, demotion or termination, the operator shall be informed of his or her right to review of the decision as provided in s. HSS 260.05.

**(8)** SURRENDER OF PREMISES. (a) Upon suspension, demotion or termination, the operator shall vacate the business enterprise premises upon the effective date of that action.

(b) If a vendor-owner does not vacate the premises as required under par. (a), the department may remove any of the property of the business enterprise owned by the vendor-owner and place this property in storage at the expense of the vendor-owner or else deliver it to the vendor-owner at that person's expense.

**(9)** INVENTORY. Upon suspension, demotion or termination, a physical inventory and valuation of equipment, accessories and merchandise shall be made by the department and the operator or the operator's representative. If the operator chooses not to be present and not to be represented by an agent, the department may engage the assistance of a third party.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.13 Other reasons for suspending or terminating a license or transferring an operator to a less-demanding business. (1)** SUSPENSION. An operator's license may be suspended by the department for an indefinite period in the event of extended illness or incapacity when there is reasonable expectation, based on medical evidence, that the operator will return to the business. The operator shall be reinstated when the period of incapacity has ended as certified by a physician.

**(2)** TERMINATION. An operator's license may be terminated by the department for any of the following reasons:

(a) Improvement of the operator's vision to the extent that the operator is no longer legally blind;

(b) Delivery to the department of a written request from the operator for cancellation of the license;

(c) Extended illness or incapacity of the operator preventing personal operation of the business enterprise, when there is no reasonable expectation, based on medical evidence, that the operator can return to work; or

(d) Death of the operator.

**(3)** TRANSFER OF OPERATOR. On written request of the operator, the department may transfer that person to a smaller or otherwise less-demanding business enterprise.

**(4)** FOLLOW-UP ACTIVITY. (a) At the time that an operator is notified that the operator's license is being suspended or terminated, the operator shall be informed of his or her right to challenge the decision as provided in s. HSS 260.05.

(b) 1. The operator shall vacate the business enterprise premises on the effective date of the suspension, termination or transfer.

2. If a vendor-owner does not vacate the premises as required under subd. 1., the department may remove any of the property of the business enterprise owned by the vendor and place it in storage at the vendor-owner's expense or else deliver it to the vendor-owner at that person's expense.

(c) Upon suspension, termination or transfer, a physical inventory and valuation of equipment, accessories and merchandise shall be made by the department and the operator or the operator's representative. If the operator chooses not to be present and not to be represented by an agent, the department may engage the assistance of a third party.

(d) Upon notification of the death of an operator, the department shall arrange with the representatives of the estate for the settlement of accounts on the basis of the interests of affected parties.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.14 Operator's agreement. (1)** The form for the agreement between the department and an operator shall be as found in the appendix to this chapter.

**(2)** The agreement between the department and an operator shall include, as attachments, the following exhibits specific to the business enterprise:

(a) 1. An inventory of the equipment which shall state the purchase price of each item, and

2. An inventory of the initial stock of merchandise and supplies which shall state the total purchase price of the initial stock;

(b) A copy of this chapter;

(c) A copy of the permit or contract between the department and the owner or occupant of the premises where the business enterprise is located;

(d) In the case of a co-managed business enterprise, a managerial duty list developed by the co-managers of the business and approved by the department; and

(e) Any other documents which in the judgment of the department are required by the particular circumstances.

**(3)** The department shall ensure that the department and the operator each have a signed copy of the agreement including all attachments.

**History:** Cr. Register, May, 1983, No. 329, eff. 6-1-83; **am.** (2) (c), **renum.** (2) (d) to be (2) (e), **cr.** (2) (d), Register, May, 1994, No. 461, eff. 6-1-94.