

Pt. 395

34 CFR Ch. III (7-1-10 Edition)

short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

[45 FR 86386, Dec. 30, 1980, as amended at 53 FR 17148, May 13, 1988]

PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

Subpart A—Definitions

Sec.

395.1 Terms.

Subpart B—The State Licensing Agency

- 395.2 Application for designation as a State licensing agency; general.
- 395.3 Application for designation as State licensing agency; content.
- 395.4 State rules and regulations.
- 395.5 Approval of application for designation as State licensing agency.
- 395.6 Vendor ownership of vending facilities.
- 395.7 The issuance and conditions of licenses.
- 395.8 Distribution and use of income from vending machines on Federal property.
- 395.9 The setting aside of funds by the State licensing agency.
- 395.10 The maintenance and replacement of vending facility equipment.
- 395.11 Training program for blind individuals.
- 395.12 Access to program and financial information.
- 395.13 Evidentiary hearings and arbitration of vendor complaints.
- 395.14 The State Committee of Blind Vendors.
- 395.15 Use of nominee agreements.
- 395.16 Permit for the establishment of vending facilities.
- 395.17 Suspension of designation as State licensing agency.

Subpart C—Federal Property Management

- 395.30 The location and operation of vending facilities for blind vendors on Federal property.
- 395.31 Acquisition and occupation of Federal property.
- 395.32 Collection and distribution of vending machine income from vending machines on Federal property.
- 395.33 Operation of cafeterias by blind vendors.
- 395.34 Application for permits.
- 395.35 Terms of permit.

- 395.36 Enforcement procedures.
- 395.37 Arbitration of State licensing agency complaints.
- 395.38 Reports.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

SOURCE: 42 FR 15802, Mar. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980, and further redesignated at 46 FR 5417, Jan. 19, 1981.

Subpart A—Definitions

§ 395.1 Terms.

Unless otherwise indicated in this part, the terms below are defined as follows:

(a) *Act* means the Randolph-Sheppard Vending Stand Act (Pub. L. 74-732), as amended by Pub. L. 83-565 and Pub. L. 93-516, 20 U.S.C., ch. 6A, Sec 107.

(b) *Blind licensee* means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

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

(1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.

(d) *Cafeteria* means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) *Secretary* means the Secretary of the Rehabilitation Services Administration.

(f) *Direct competition* means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated

by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

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

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

(i) *License* means a written instrument issued by the State licensing agency to a blind person, authorizing such person to operate a vending facility on Federal or other property.

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

(k) *Net proceeds* means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges re-

quired to be paid by such blind vendors).

(l) *Nominee* means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) *Normal working hours* means an eight hour work period between the approximate hours of 8:00 a.m., to 6:00 p.m., Monday through Friday.

(n) *Other property* means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) *Permit* means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) *Program* means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) *Satisfactory site* means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

(r) *Secretary* means the Secretary of Education.

(s) *Set-aside funds* means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) *State* means a State, territory, possession, Puerto Rico, or the District of Columbia.

§ 395.2

(u) *State vocational rehabilitation agency* means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) *State licensing agency* means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) *United States* includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) *Vending facility* means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

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

(z) *Vending machine income* means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the

34 CFR Ch. III (7-1-10 Edition)

United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) *Vendor* means a blind licensee who is operating a vending facility on Federal or other property.

(bb) *Vocational rehabilitation services* means those services as defined in § 1361.1(ee) (1) and (2) of this chapter.

Subpart B—The State Licensing Agency

§ 395.2 Application for designation as a State licensing agency; general.

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under part 1361 of this chapter.

(b) Such application shall be:

(1) Submitted in writing to the Secretary;

(2) Approved by the chief executive of the State; and

(3) Transmitted over the signature of the administrator of the State agency making application.

§ 395.3 Application for designation as State licensing agency; content.

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;