

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202-2800

TECHNICAL ASSISTANCE CIRCULAR
RSA-TAC-21-02
DATE: June 7, 2021

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
ELECTED COMMITTEES OF BLIND VENDORS
GENERAL SERVICES ADMINISTRATION
UNITED STATES POSTAL SERVICE
UNITED STATES DEPARTMENT OF DEFENSE
ALL OTHER FEDERAL AGENCIES

SUBJECT: The Application of the Randolph-Sheppard Act Priority for Blind Vendors to the Operation of Vending Machines on Federal Property and the Use of Third-Party Vendors on that Property

PURPOSE:

Based on reviews of State rules and regulations under the Randolph-Sheppard Act (R-S Act) and inquiries from State licensing agencies (SLAs) and Federal agencies, the Rehabilitation Services Administration (RSA) has learned that confusion exists regarding how the R-S Act's priority for blind vendors applies to the operation of vending machines on Federal property, and how the R-S Act's vending machine income sharing requirements are implicated by contracting with third-party vendors if no blind person is operating a vending machine on Federal property.

The guidance in this technical assistance circular (TAC) describes the requirements in the R-S Act and its implementing regulations that provide a priority for persons who are blind to operate vending facilities, including vending machines, on Federal property. If the SLA is not able to provide a blind vendor to operate vending machines on Federal property, the Federal agency may decline to provide a permit to the SLA. The Federal agency may then choose to contract with a third-party vendor to operate the machines and is obligated to provide the vending machine income to the SLA. It is inconsistent with the R-S Act for the SLA to contract directly with third-party vendors to operate vending machines on Federal property as explained further in this TAC.

The guidance contained in this TAC is intended to assist SLAs and Elected Committees of Blind Vendors (ECBVs) in developing their State rules and regulations and to assist SLAs and Federal agencies when negotiating permits for vending machines and the distribution of vending machine income from vending machines on Federal property. Ensuring the operation of vending machines on Federal property is implemented in a manner consistent with the requirements of the R-S Act helps to fulfill the purpose of the R-S Act to provide remunerative employment for individuals who are blind and to help them to be self-supporting.

Other than statutory and regulatory requirements included in this document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

TECHNICAL ASSISTANCE:

Operation of Vending Machines by Blind Vendors

The R-S Act requires that Federal agencies provide a priority for individuals who are blind and who are licensed by an SLA in the operation of vending facilities on Federal property. Section 107(b) provides:

In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this Act; and the Secretary, through the Commissioner, shall . . . prescribe regulations designed to assure that --

- 1) The priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to section 7 of this Act to achieve and protect such priority), and
- 2) Wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.

Automatic vending machines are included in the definition of a “vending facility” under Section 107e(7) of the R-S Act and its implementing regulations at 34 C.F.R. § 395.1(x). “Vending machine, for the purpose of assigning vending machine income . . . 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.” 34 C.F.R. § 395.1(y)

Thus, under the R-S Act, a Federal agency has the responsibility to give a priority to blind persons to operate vending machines on Federal property. There may be circumstances, however, when an SLA does not have a blind person available to operate a vending machine on Federal property. In that case, the R-S Act addresses how Federal agencies may contract with third-party commercial vending concerns (third-party vendors) to operate the vending machines and how they must distribute the vending machine income to the SLAs.

Vending machine income is defined at Section 107e(8) of the R-S Act and 34 C.F.R. § 395.1(z) of the regulations as “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 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.”

Use of Third-Party Vendors on Federal Property

Section 107d-3 of the R-S Act and the regulations at 34 C.F.R. § 395.32 address the situation in which a third-party vendor is used to operate, service, or maintain the vending machines, as defined under 34 C.F.R. § 395.1(y), on Federal property for, or with the approval of a Federal agency, producing vending machine income, as defined by the R-S Act and regulations, and how the vending machine income in those situations is accrued and disbursed. The Federal agency official is the one responsible for ensuring compliance with the vending machine requirements, including collecting and accounting for the income. When the Federal agency contracts with a third-party vendor to operate vending machines on Federal property, the amount of income the agency pays to the SLA depends on whether there is already a blind vendor operating another vending facility on the Federal property. If there is, then Section 107d-3(b)(1) of the R-S Act and 34 C.F.R. § 395.32(b) provide that the Federal agency is required to accrue and pay to the SLA 100 percent of the vending machine income from the vending machines on the Federal property which are operated by a third-party vendor in direct competition with a vending facility operated by a blind vendor. If there is no blind vendor operating a vending facility on the Federal property, 50 percent of all vending machine income from the third-party vendor accrues to the SLA as provided in Section 107d-3(b)(1) of the R-S Act and 34 C.F.R § 395.32(c).¹

As noted above, vending machine income, in pertinent part, is the receipts from vending machine operations on Federal property, after deducting the costs of goods sold (including reasonable service and maintenance costs), where machines are operated by the Federal agency or commissions paid by a third-party vendor which operates the machines for the Federal agency. After the Federal agency pays the vending machine income to the SLA, the SLA disburses it to the blind vendor on the property or to blind vendors in the State in accordance with 34 C.F.R. § 395.8.

Under 34 C.F.R. § 395.32(h), if a Federal agency has contracted with a third-party vendor because an SLA had no blind vendor available to operate vending machines, the Federal agency must afford an SLA the opportunity to exercise its priority for blind vendors to operate vending facilities on the Federal property at the expiration of the arrangement with the commercial vending concern:

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of this section.

¹ Section 395.32(d) is an exception to this general rule, providing that 30 percent of all vending machine income from vending machines on Federal property where there is no vending facility operated by a blind vendor will accrue to the SLA if at least 50 percent of the total hours worked on the premises occurs during a period other than normal working hours.

The R-S Act makes clear in Section 107(b) that Federal agencies are required to provide the priority for blind vendors and that the vending machine income-sharing provisions are designed to “achieve and protect” that priority. The priority for blind vendors does not extend to SLAs installing third-party vendors or individuals who are not blind to operate vending machines on Federal property as it would be inconsistent with the plain language in the R-S Act to do so. Thus, an SLA is not permitted to contract with third-party vendors, instead of assigning a blind vendor to operate vending machines, even if it determines the income from the commercial vendors would be more profitable to the State’s Randolph-Sheppard program. To do so would be inconsistent with the R-S Act’s stated purpose to provide employment and economic opportunities to individuals who are blind and to strive to make them self-supporting.

When an SLA does not have a blind vendor available to operate vending machines on Federal property, a Federal agency may decline to provide the SLA with a permit for the operation of the vending machines, and it is the *Federal agency* that may contract with a third-party vendor to operate the machines. The SLA does not have the authority to do so. If the Federal agency engages such a third-party vendor, the Federal agency must share the required percentage of the vending machine income with the SLA, which must distribute and use the income in accordance with 34 C.F.R. § 395.8. Under Section 107d-3(f) of the R-S Act and 34 C.F.R. § 395.32(j), Federal agencies may promulgate regulations or make arrangements with SLAs that allow for a greater percentage or amount of vending machine income than specified in the Federal requirements.

SUMMARY:

The Randolph-Sheppard program exists to benefit blind individuals and to provide them with opportunities to become self-supporting. The R-S Act provides a priority for persons who are blind to operate vending facilities, including vending machines on Federal property. If the SLA is not able to provide a blind vendor to operate vending machines on Federal property, the Federal agency may decline to provide a permit to the SLA and may contract with a third-party vendor to operate the vending machines, sharing the vending machine income with the SLA as required by the R-S Act. It is inconsistent with the R-S Act and undermines its purpose for an SLA, rather than the Federal agency, to contract directly with a third-party vendor or persons who are not blind to operate vending machines on Federal property, even if that vendor increases funding for a State’s Randolph-Sheppard program. When an SLA increases the number of individuals who are blind and operating vending facilities on Federal property, the SLA also helps those agencies fulfill their responsibility under the R-S Act to provide economic opportunities to blind persons.

CITATIONS:

Randolph-Sheppard Act, 20 U.S.C. §§ 107(a), 107(b), 107d-3, 107e(7), 107e(8).
Randolph-Sheppard Act Regulations found at 34 C.F.R. §§ 395.1(x), 395.1(y), 395.1(z), 395.4, 395.8. 395.32, in particular, (b), (c), (d), (h), and (j).

INQUIRIES:

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_____/s/
Carol L. Dobak
Acting Deputy Commissioner,
delegated the authority to perform the
functions and duties of the Commissioner