

§ 395.2

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.

(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 a 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;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nominee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements;

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under § 395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

§ 395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

- (1) The State licensing agency; or
- (2) Its nominee, subject to the conditions specified in § 395.15(b); or
- (3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

- (1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and
- (2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§ 395.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State