

a building is to be constructed which would contain only 80 Federal employees, upon agreement of the on-site official and the State licensing agency, the DoD Component concerned may determine to provide a satisfactory site in which the blind have agreed to operate a vending facility.

(4) When a DoD Component is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantial direct competition with such restaurant or other food operation, the requirement to provide a satisfactory site does not apply.

(i) Effective January 2, 1975, vending machine income generated by DoD will be shared with State licensing agencies for the blind and/or blind vendors as set forth below. The on-site official is responsible for the collection of, and accounting for, such vending machine income (as defined in §260.6) and for otherwise ensuring compliance with the requirements of this paragraph.

(1) The vending machine income-sharing requirements are as follows:

(i) One hundred percent (100%) of the vending machine income from vending machines in direct competition with blind-operated vending facilities will be provided the State licensing agency.

(ii) Fifty percent (50%) of the vending machine income from vending machines not in direct competition with blind-operated vending facilities will be provided the State licensing agency.

(iii) Thirty percent (30%) of the vending machine income from vending machines not in direct competition with blind-operated vending facilities and located where at least 50 percent of the total hours worked on the premises occurs during other than normal working hours (as defined in §260.6) will be provided the State licensing agency.

(2) The determination of whether a vending machine is in direct competition with the blind-operated vending facility is the responsibility of the on-site official subject to the concurrence of the State licensing agency.

(3) These vending machine income-sharing requirements do not apply to:

(i) Income from vending machines operated by or for the military exchanges or ships' stores systems; or

(ii) Income from vending machines, not in direct competition with a blind-operated vending facility, at any individual location, installation, or facility (as defined in §260.6) where the total of the vending machine income (as defined in §260.6) from all such machines at such location, installation, or facility does not exceed \$3,000 annually.

(4) The payment to State licensing agencies under these income-sharing requirements must be made quarterly on a calendar year basis. The first payment of income, however, will be made no later than April 30, 1978. This first payment will be for the period March 23, 1977, through the end of calendar year 1977. It will also include amounts collected and set aside during the period January 2, 1975, through March 22, 1977, for distribution to State licensing agencies. DoD Component activities which did not set aside vending machine income for distribution during the period January 2, 1975, through March 22, 1977, will consider taking steps to determine the amounts of such vending machine income which should have been withheld during that period and withhold such amounts from future income for distribution. All subsequent quarterly payments will be made within 60 days after expiration of the applicable calendar quarter.

#### §260.4 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (ASD (MRA&L)) will monitor the overall DoD program and consult with DoD Components on all determinations (1) that the granting of a priority to the blind would be adverse to the interests of the United States, and (2) to suspend or terminate a permit to operate a vending facility.

(b) The Head of the DoD Component concerned, in monitoring its program shall:

(1) Approve/disapprove State licensing agency applications for permits and the provision of satisfactory sites;

(2) Consult with the on-site official on determinations that granting a priority to the blind would be adverse to the interests of the United States and

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on termination of contracts to operate a cafeteria; and

(3) Where circumstances warrant, suspend or terminate a permit to operate a vending facility.

(c) The on-site official will be the point of contact with State licensing agencies and will:

(1) Consult with State licensing agencies on articles and services to be provided;

(2) Determine, when appropriate, that granting a priority to the blind would be adverse to the interests of the United States and justify this determination to the Secretary, Health, Education, and Welfare through the Head of the DoD Component;

(3) Notify State licensing agencies of acquisition or substantial alteration or renovation of property;

(4) Ensure that operators are in fact State licensed blind persons and that sighted employees and assistants are utilized only to the extent reasonably necessary; and

(5) Negotiate with State licensing agencies on other matters indicated in § 260.3.

### § 260.5 Arbitration.

Whenever any State licensing agency for the blind determines that any activity of the Department of Defense is failing to comply with the provisions of the Act and all informal attempts to resolve the issues have been unsuccessful, the State licensing agency may file a complaint with the Secretary, HEW, who will convene an ad hoc arbitration panel in accordance with the provisions of 45 CFR 1369.37.

### § 260.6 Definitions.

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

(b) *Cafeteria.* A food dispensing facility which provides a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a serving line where the customer serves or selects for himself from displayed selections. A cafeteria may be fully automatic, self-service, or have limited waiter or waitress service. Table or booth seating facilities are always provided. DoD Component food

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dispensing facilities which conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not "cafeterias" if they engage primarily in full table-service operations.

(c) *Direct competition.* The presence and operation of a DoD Component vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas serving employees, the majority of whom normally do not have 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, will not be considered to be indirect competition with that vending facility.

(d) *Federal property.* Any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States.

(e) *Head of the DoD component.* Deputy Secretary of Defense, Secretaries of the Military Departments and the Directors of Defense Agencies or their designees. For the Pentagon Building only, the Deputy Assistant Secretary of Defense (Administration) is designated as the "Head of the DoD Component."

(f) *Individual location, installation, or facility.* A single building or a self-contained group of buildings. A self-contained group of buildings means two or more buildings which are in close proximity to each other, and between which a majority of the Federal employees working in such buildings regularly move from one building to another in the normal course of their official business during a normal working day.

(g) *Federal employees.* Civilian appropriated fund and nonappropriated fund employees of the United States.

(h) *License.* A written instrument issued by a State licensing agency to a blind person, authorizing that person to operate a vending facility on Federal or other property.

(i) *Normal working hours.* An 8-hour work period between the hours of 0800 and 1800 hours, Monday through Friday.