

Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

782 KAR 1:010. Kentucky Business Enterprises.

RELATES TO: KRS 13B, 61.870-61.884,163.470(11), 438.310, 34 C.F.R. Part 361.38, 395, 20 U.S.C. 107-107f

STATUTORY AUTHORITY: KRS 163.470(5), 34 C.F.R. 395.4, 20 U.S.C. 107b(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. 20 U.S.C. 107(b)(5) requires the office to promulgate administrative regulations for the operation of the vending facility program on federal properties in Kentucky. This administrative regulation establishes the operational requirements for the business enterprises program created by KRS 163.470(9)~~[for the federal Randolph Sheppard Vending Facility Program]~~.

Section 1. Definitions.

- (1) "Active participation" means an ongoing process which:
 - (a) Is Between the office and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures; and
 - (b) Does not supersede the office's final authority to administer the program.
- (2) "Administrative Hearing" means a full evidentiary hearing as defined in KRS 13B.010 Section 2.
- (3) ~~[(2)]~~ "Agreement" means a written contract entered into between the office and property management authorizing the establishment of a vending facility and setting forth the service obligations.
- (4) ~~[(3)]~~ "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.
- (5) "Blind person" is defined by 20 U.S.C. 107e(1).
- (6) "Committee" means the Kentucky Blind Vendor Committee.
- (7) ~~[(4)]~~ "Counselor" means a vocational rehabilitation counselor in the office~~[Office for the Blind]~~.
- (8) ~~[(5)]~~ "Director" means the Division Director of Kentucky Business Enterprises.
- (9) ~~[(6)]~~ "Eligible individual" means a consumer as defined at 782 KAR 1:020, Section1(4).
- (10) ~~[(7)]~~ "Executive director" means the Executive director of the Kentucky Office of Vocational Rehabilitation~~[Kentucky Office for the Blind]~~.
- (11) ~~[(8)]~~ "Kentucky Business Enterprises" or "KBE" means the~~[a]~~ division of the office established by KRS 163.470(11) to administer the blind vendor program in Kentucky.
- (12) ~~[(9)]~~ "Licensee" means an eligible individual who:
 - (a) Has successfully completed the KBE Vendor Training Program;
 - (b) Has been licensed to operate a KBE vending facility; and
 - (c) Is not operating a vending facility.
- (13) ~~[(10)]~~ "Mediation" means a voluntary process through which a vendor may~~[an informal option which allows a vendor to]~~ seek resolution of a dispute with an office action which:
 - (a) Arises from the operation or administration of the vending facility program; and
 - (b) Adversely affects the vendor.

(14) ~~((11))~~ "Office" means the Office of Vocational Rehabilitation~~[Office for the Blind]~~ which is the state licensing agency established by KRS.163.470 to comply with 20 U.S.C. 107a(5) for the blind vendor program~~[Randolph Sheppard Vending Facility Program]~~ in Kentucky.

(15) ~~((12))~~ "Seniority" means the accumulated period of time during which a vendor has operated KBE vending facilities.

(16) ~~((13))~~ "Trainee" means an eligible individual who has been selected for, and is actively participating in, the KBE Vendor Training Program~~[leading to licensure]~~.

(17) ~~((14))~~ "Vending facility" means a food sales operation within the meaning of 34 C.F.R. 395.1(x) operated on state, federal, or private property under the auspices of KBE~~[by a vendor]~~.

(18) ~~((15))~~ "Vendor" means a licensee who is~~[responsible for]~~ operating a vending facility under terms of a~~[an]~~ vendor agreement, agreement, permit, or other contract that governs the operation of ~~[relating to]~~ the vending facility.

(19) ~~((16))~~ "Vendor Agreement~~[agreement]" means the~~~~[a]~~ written contract~~[entered into]~~ between the office and a ~~[KBE]~~ vendor which:~~[authorizing the vendor to operate a vending facility at a specific location and setting forth the responsibilities of the parties with respect to the vending facility]~~

(a) Authorizes the vendor to operate a vending facility at a specific location; and

(b) Sets forth the terms of the operation of the vending facility.

Section 2. Training and Licensure.

(1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes that the criteria in paragraph (b) of this subsection have been met.

(b) The applicant shall:

1. Be a ~~[Meet a visual diagnosis of]~~ blind person~~[as defined in the federal Randolph Sheppard Act at 20 U.S.C. 107e(1) and the definition of blind person established in 34 C.F.R. 395.1(e)]~~;

2. Be a citizen of the United States;

3. Have met ~~[Be certified that the consumer meets]~~ the general criteria of eligibility for vocational rehabilitation services from the office;

4. Have received a high school diploma or GED certification;

5. Have math skills at an eighth-grade level or above;

6. Have financial, verbal communication and public relations skills sufficient to operate~~[for operating]~~ a vending facility~~[business]~~;

~~[7.] [Have verbal and communication skills;]~~

~~[8.] [Have public relations skills;]~~

7. Maintain personal hygiene to meet all health codes applicable to the vending facility and adhere to a dress code appropriate for the vending facility location~~[~~

~~[9.] [Have personal hygiene and appearance appropriate for meeting the public];~~

8. ~~[10.]~~ Be independent in performing the activities of daily living~~[daily living activities]~~with accommodation;

9. ~~[11.]~~ Have mobility skills sufficient to safely navigate the vending facility; and

10. ~~[12.]~~ Have reached the age of eighteen ~~(18)~~~~[majority]~~.

(2) KBE screening process for training program.

(a) The screening committee shall be composed of:

1. The ~~[KBE division]~~ director or designee;

2. The chair of the Committee~~[State Committee of Blind Vendors]~~ or designee;

3. A KBE vendor appointed by the chair of the State Committee of Blind Vendors;

4. The Director of Consumer Services or a designee; and

5. The KBE assistant division director or designee.
- (b) A designee shall not be the counselor of the applicant.
- (3) KBE Vendor Training Program.
 - (a) The KBE vendor training program shall provide on-the-job work experience and classroom instruction~~[leading to licensure as a KBE vendor]~~.
 - (b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the Committee~~[State Committee of Blind Vendors]~~ to ensure that a trainee, upon completion of the program, demonstrates proficiency in all aspects of KBE vending facility operation.
 - (c) ~~[Upon successful completion of the training program,]~~ the office shall award a vendor license to a~~[the]~~ trainee who successfully completes the vendor training program.

Section 3. KBE Vendor License.

- (1) License Conditions.
 - (a) A license to operate a KBE vending facility shall be issued for an indefinite period of time.
 - (b) The office shall provide management services and training to assist the vendor in operating a vending facility~~[fulfilling the terms of the agreement]~~.
 - (c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If KBE determines~~[information is obtained that]~~ the vendor is not meeting the operational standards established in Section 9 of this administrative regulation, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if appropriate, shall be made available to remedy a deficiency. The office may require the vendor to participate in training provided by, or arranged by, KBE if operational standards established in Section 9 of this administrative regulation are not being met.
 - (d) The office shall terminate the license of a vendor if, after affording the vendor the opportunity for an~~[a]~~ administrative~~[full evidentiary]~~ hearing, the office finds that:
 1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement, such as the filing of false set aside reports, the violation of any state or federal law regarding payment of taxes and labor requirements, and the failure to maintain insurance as required by Section 9(20) of this administrative regulation; or
 2. The vendor's vision has improved so that the vendor no longer meets the definition of blind person~~[established in 34 C.F.R. 395.1(e) of the federal implementing regulations to the Randolph Sheppard Act, 20 U.S.C. 107 through 107f]~~. In order to ensure compliance, vendors may be required to undergo an ophthalmologic examination. The office shall select and approve the exam provider and shall be responsible for the costs of the examination.
- (2) Leave of absence.
 - (a) The office may grant a vendor a leave of absence from a vending facility of up to one (1) year for reasons of health, pregnancy, or personal reasons after a written request with justification is approved by the director.
 - (b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.
 - (c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:
 1. Resign from that vending facility; or
 2. Be subject to termination of the vendor agreement to operate the vending facility.
- (3) Resignation.

(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

(c) Reentry into KBE and eligibility to bid on a vending facility by an individual that resigned from KBE shall be allowed only upon completion of training, if the individual that resigned did so for one (1) calendar year or more prior to their attempt to reenter KBE.

Section 4. Vendor Vacancy.

(1) The office shall determine that a vendor vacancy exists if:

(a) A new vending facility is established; or

(b) An existing vending facility position is vacated.

(2) If a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.

Section 5. Vendor Appointment.

(1) Announcement of vacancy.

(a) If a vending facility vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids shall be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for a vacancy by submitting a completed Application for Vending Facility Vacancy Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor or licensee to manage each vending facility, in accordance with this subsection.

(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of three (3) representatives of the State Committee of Blind Vendors, who shall be appointed by the committee chair, on each vending facility manager appointment.

(c) The selection process shall begin with compilation of the seniority of each bidder based on currently existing KBE records. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in areas such as:

1. Customer relations;

2. Cooperation with property management;

3. Cooperation with KBE staff;

4. Complaints and commendations;

5. Timely and accurate submission of monthly financial reports and set-aside payments;

6. Financial management;

7. Recordkeeping;

8. Audit reports; and

9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are reasonably satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this subsection or declines the appointment, the director shall apply the criteria of this subsection to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bidder's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on the following equally weighted criteria:

1. KBE final training test score;
2. On-the-job training reports;
3. Formal education; and
4. Prior work history.

(4) Appointment.

(a) The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the absence of a written response, the offer of appointment shall be rescinded, and the director shall select a new appointee.

(b) If a vendor resigns or abandons a vending facility within six (6) months of appointment to the facility for any reason other than properly documented medical reasons, the vendor shall be ineligible to bid on another vending facility for six (6) months.

(5) Emergency appointment.

(a) The office shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to a vending facility vacancy if time does not permit adherence to the vendor appointment process. An emergency appointment may occur for a leave of absence, appointment of a vendor or licensee to another vacancy, death, abandonment, health emergency, or other similar occurrence.

(b) A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment.

(c) An emergency appointment shall not be more than six (6) months in duration from the time the appointment is made.

Section 6. Saleable Stock Inventory Acquisition.

(1)

(a) If a licensee is placed in a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis that is equal to three weeks of the facility's gross sales as determined by the facility's historical data, or if a new facility, the gross sales of a similar facility~~[not to exceed \$5,000]~~. This amount shall be used to reimburse:

1. The stock wholesalers;
2. The vendor exiting the vending facility; or
3. Both.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee, based on the amount and type of stock used previously at the same or similar vending facilities.

(c) Payment for additional stock ~~[, above the \$5,000,]~~ needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The licensee shall make monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the office's representative.

(2)

(a) If a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as provided in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed at the vending facility, whether as the beginning inventory or additional inventory.

(c) The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The vendor shall make monthly payments to KBE up to the value of the stock purchases.

(3)

(a) If an emergency appointment of a vendor is made to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. KBE shall purchase needed inventory above the initial amount at the vending facility, at wholesale cost from:

1. The exiting vendor; or
2. Wholesalers.

(b) The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility.

(c) If a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from the exiting vendor or KBE.

(4) If an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) If an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall:

(a) Accept responsibility for total inventory of the vending facility; and

(b) Maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Mediation and Administrative Hearing [~~Vendor Administrative Remedies and~~ Procedures.

(1) Mediation.

(a) A vendor who is dissatisfied with an office action arising from the operation or administration of the vending facility program which adversely affects the vendor has the right to request mediation and an administrative hearing. A request shall:

1. Be submitted to the director in writing;
2. Within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation; and
3. Set forth the details of the complaint.

(b) The office shall maintain a list of qualified and impartial mediators and when a request for mediation is received, the office shall:

1. Choose a mediator, with the agreement of the vendor, from the list and schedule a mediation to be held within forty-five (45) calendar days of the receipt of the request for mediation;
2. Schedule the mediation at a field office convenient to the aggrieved vendor during regular state working hours;
3. Provide reasonable accommodations upon request;
4. Allow the Appellant to be represented by an attorney or advocate at appellant's own expense;
5. Send a representative to the mediation who is authorized to bind the office to an agreement; and
6. Not use the mediation process to deny or delay the vendor's right to pursue resolution of the dispute through an administrative hearing.

(c) If the vendor and office mutually agree to a resolution at the mediation, that agreement shall be documented in writing and signed by both parties before the mediation is concluded.

(d) Discussions arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(e) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an administrative hearing.

(2) Administrative hearing

(a) If the vendor does not request mediation, or mediation does not resolve the dispute, the vendor may request an administrative hearing in accordance with the terms set forth in subsection (1):

(b) Upon receipt of a request for an administrative hearing, the office shall conduct an administrative hearing in accordance with KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.[

~~[(a)] [Participation in the mediation process shall be voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.]~~

~~[(b)]~~

~~[1.] [Within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.]~~

~~[2.] [The office shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within forty-five (45) calendar days of the receipt of the request.]~~

~~[3.] [The mediation shall be held at a field office convenient to the aggrieved vendor during regular state working hours.]~~

~~[4.] [Reasonable accommodations shall be provided upon request.]~~

~~[(e)] [A representative of the office who is authorized to bind the office to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and office mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.]~~

~~[(d)] [If a mutually agreeable resolution is not obtained, the vendor may submit a request for an evidentiary hearing within thirty (30) calendar days of the unresolved mediation.]~~

~~[(2)] [Evidentiary hearing.]~~

~~[(a)] [If desired, a vendor shall request an evidentiary hearing in writing to the director within thirty (30) calendar days:]~~

~~[1.] [Of an unresolved mediation; or]~~

~~[2.] [From an office action arising from the operation or administration of the vending facility program which adversely affects the vendor.]~~

~~[(b)] [The office shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.]~~

~~[(c)] [A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.]~~

~~[(3)] [Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.]~~

Section 8. State Committee of Blind Vendors. The Kentucky Committee of Blind Vendors~~[State Committee of Blind Vendors]~~ shall be established to actively participate with the office in the major administrative and policy decisions affecting the overall administration of the blind vendor program in Kentucky~~[Randolph Sheppard Vending Facility Program]~~ and to perform other functions consistent with 34 C.F.R. 395.14.

(1) Election procedures. The office shall provide for the biennial election of the Committee~~[State Committee of Blind Vendors]~~ consistent with the bylaws drafted by the Committee~~[procedures established by the general assembly of all blind vendors in accordance with 34 C.F.R. 395.14]~~.

(2) Meetings of the committee.

(a) The Committee~~[State Committee of Blind Vendors]~~ shall:

1. Conduct all meetings in accordance with the Committee bylaws and the Kentucky Open Meetings Act as set forth in KRS 61.800 et. seq.;

2. Meet at least quarterly with the director or his designee in attendance.

(3)

(a) The office shall send the announcement of the meeting, and~~[with]~~ the agenda as drafted by the committee chairperson and the director or designee, shall be sent~~[mailed]~~ to the committee members, and all vendors, and licensees~~[by KBE]~~ via electronic mail or U.S. Mail~~[Mailings]~~. The documents shall be provided~~[prepared]~~ in alternative format as necessary.

(b) ~~Office [The KBE]~~ staff shall record the official minutes of meetings and prepare and ~~send[mail]~~ a copy of the minutes to all vendors and licensees after approval by the committee chair via electronic mail or U.S. Mail. The minutes may be ~~provided[mailed]~~ in alternative format as necessary.

(c)

1. The office [KBE] shall make committee meeting space available to the chairperson as necessary to conduct the[for] business of the Committee[State Committee of Blind Vendors].

2. The director and committee chair shall develop an annual committee budget.

3. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with 200 KAR 2:006.

4. Additional meetings shall be eligible for reimbursement with the approval of the KBE director or office executive director, based on availability of funds and the purpose of the meeting.

(d) ~~The Committee[State Committee of Blind Vendors]~~ shall adopt bylaws, which shall be approved by the office.

Section 9. Vendor's Rights and Responsibilities. A vendor shall:

(1) Execute a Vendor Agreement ~~[Enter into an agreement]~~ with the office for the operation of a ~~[Randolph Sheppard]~~ vending facility~~[under the auspices of KBE]~~ prior to beginning operation of a vending facility;

(2) Operate the vending facility in accordance with accepted-business practices and in compliance with all federal, state, and local laws, administrative regulations, and ordinances applicable to the operation of the vending facility;

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner;

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs;

(5) Maintain personal hygiene and vending facility sanitation sufficient to meet all health codes applicable to the vending facility, and adhere to a dress code appropriate for the vending facility location; ~~[Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers;]~~

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement;

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold;

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18);

(9) Clean, fill, and service machines and equipment as often as necessary to ensure adequate stock to meet the needs of the customers at the vending facility;~~[daily to assure proper functioning and report promptly to KBE any needed repair of equipment];~~

(10) Assure proper functioning of all machines and equipment and promptly report the need for equipment repairs;

~~(11) [(10)]~~ Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if necessary, of the personally owned equipment;

~~(12) [(11)]~~ Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the office has made an emergency appointment

for an extended leave. Preference may be given to qualified blind or visually-impaired persons if selecting substitutes;

(13) ~~[(12)]~~ Cooperate with vending facility audits that may be performed periodically at KBE expense;

(14) ~~[(13)]~~ Pay the monthly seven (7) percent set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments shall be received by the office on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer;

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent;

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received;

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check;

(e) If a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order;

(f) If a vendor is late in making the set aside payment to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year; and

(g) If a vendor is late in making the set aside payment to the office for ninety (90) or more calendar days, or is late in making the set aside payment to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

(15) ~~[(14)]~~ Pay resaleable stock suppliers promptly and retain all invoices and receipts for three (3) calendar years;

(16) ~~[(15)]~~ Include rebates, commissions, or bonuses received by the vendor from suppliers as income of the vending facility and account for this income on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form;

(17) ~~[(16)]~~

(a) Utilize office-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) Make available to the office upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards;

(18) ~~[(17)]~~

(a) Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the office on or before the 20th of the following month, with the expenses listed deducted as operating expenses on the report:

1. Expendable supplies used in the vending facility;
2. Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;
3. Rental and commission fees paid to building management as stipulated in the vending facility agreement;
4. Telephone and utility expenses of the vending facility;
5. Pest control services;
6. Delivery charges paid on resaleable stock;

7. Janitorial services;
8. Liability insurance;
9. License and permits required by health departments;
10. Employee wages; and
11. Employee fringe benefits;

(b) If a vendor is late in making the monthly vending facility financial report to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year;

(c) If a vendor is late in making the monthly vending facility financial report to the office for ninety (90) or more calendar days, or is late in making the monthly vending facility financial report to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

~~(19)~~ ~~[(18)]~~ Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for any personal use or charitable donation;

~~(20)~~ ~~[(19)]~~ Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including local, state, and federal taxes;

~~(21)~~ ~~[(20)]~~

(a) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

1. Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. The policies shall insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises; and

2. Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and other insurance coverage required by law for both the vendor and vendor's employees;

(b) Submit proof of insurance as required by this subsection to KBE annually. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage; and

(c) Vendors that fail to annually submit proof of insurance as required by this subsection shall be subject to termination or suspension of the vendor's license, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation;

~~(22)~~ ~~[(21)]~~ Not bind or obligate the office or represent to an entity that the vendor is a legal representative, agency, or employee of the office;

~~(23)~~ ~~[(22)]~~ Not remove or move any KBE-owned equipment located at any vending facility without approval from the director;

~~(24)~~ ~~[(23)]~~ Maintain a separate business bank account for deposit of all lottery sales and proceeds in a vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation;

~~(25)~~ ~~[(24)]~~ Adhere to the initial stock inventory requirements established in Section 6 of this administrative regulation;

~~(26)~~ ~~[(25)]~~ Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential;

~~(27)~~ ~~[(26)]~~ Participate in training arranged and paid for by the office as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from the office for vending facility management training;

~~(28)~~ ~~[(27)]~~ Request access in writing, if desired, to all program and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884, and the federal Randolph-Sheppard Act, 20 U.S.C. 107 through 107f. The data may be made available in alternative format. At a vendor's request, the office shall arrange a convenient time for a staff member to assist in the interpretation of the data;

~~(29)~~ ~~[(28)]~~ Have the opportunity to read and respond to each complaint or commendation placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by registered or certified mail. A response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file; and

~~(30)~~ ~~[(29)]~~

(a) Be prohibited from bidding on a vending facility for one (1) calendar year dating from the date of the second late payment if the vendor fails to make two (2) consecutive monthly payments in any repayment schedule established pursuant to Section 6 of this administrative regulation;

(b) Be subject to removal from ~~a~~~~the~~ vending facility, after first affording the vendor an opportunity to request a mediation and administrative hearing~~remedy~~ in accordance with Section 7 of this administrative regulation, if the vendor:

1. Fails to make a payment in any repayment schedule established pursuant to Section 6 of this administrative regulation for ninety (90) or more calendar days; or
2. Is late in making the payment to the office six (6) or more times in a calendar year.

Section 10. Office's Rights and Responsibilities. The office shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities;

(2) Assist in stocking vending facilities with initial resaleable products in accordance with Section 6 of this administrative regulation;

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The office shall:

(a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment owned by KBE;

(c) Approve or deny vendor requests for replacement equipment if justified;

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or agreement obligations. The office shall review vendor requests for additional equipment with accompanying justification for the investment. KBE shall make the final decision and notify the vendor; and

(e) Approve requests, if justified, for vendor-purchased equipment.

(4) Develop financial controls to ensure financial accountability of each vending facility;

(5) Establish a seven (7) percent set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility;

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks as established in Section 9(13) of this administrative regulation, and take disciplinary action for persistent delinquency or dishonored checks~~or nonnegotiable checks~~, including suspension or termination of a vendor's license, after first affording the vendor the opportunity to request mediation and an administrative hearing~~an administrative remedy~~;

(7)

(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation; or

- (b) Provide, or provide for, temporary assistance or training to a vendor determined to be remiss in recordkeeping or reporting. If the temporary assistance or training does not correct the deficiency, the office may require the vendor to utilize qualified bookkeeping services;
- (8) Contract for periodic audits of each vending facility at office expense;
- (9) Inventory and establish the wholesale value of the on-hand saleable stock inventory if a vendor leaves a vending facility;
- (10) If a vendor appointment is made, take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost;
- (11) Determine the product types and quantities necessary for successful operation of a vending facility if appointing a vendor to a vending facility;
- (12) Provide each licensee with a copy of this administrative regulation in alternative format as necessary;
- (13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format as necessary;
- (14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, administrative regulations, vending facility service obligations, and generally-accepted business practices; and
- (15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director, based on availability of funding and whether the director reasonably believes the requested training is warranted under the circumstances.

Section 11. Confidentiality.

- (1) All identifiable personal information concerning applicant, licensee, and vendors shall be confidential consistent with 34 C.F.R. 361.38. Identifiable personal information shall include documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be governed by the provisions of 34 C.F.R. 361.38. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within three (3) working days from receipt of the judicial order.
- (2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be public records pursuant to KRS Chapter 61. The KBE files shall include business records concerning the operation of vending facilities and shall be maintained by the office consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection.

Section 12. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "Application for Vending Facility Vacancy", February 2001; and
- (b) "Financial Report, Kentucky Business Enterprises", August 2000.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601. [~~Office for the Blind, 275 East Main Street, Mail Stop 2-EJ, Frankfort Kentucky 40621~~], Monday through Friday, 8 a.m. to 4:30 p.m. For additional information, please visit kcc.ky.gov/vocational-rehabilitation.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021
FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susie Edwards, Kentucky Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor NE, Frankfort, Kentucky 40601, phone 502-564-4440, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes guidelines for administration of Kentucky's blind vendor program.

(b) The necessity of this administrative regulation:

This administrative regulation was necessary to implement provisions of 20 U.S.C. §§ 107-107f and KRS 163.470(9). (c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific guidelines to implement the administration of Kentucky Business Enterprises necessary to implement the blind vendor program set forth in KRS 163.470(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

No answer provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation provides information necessary for specific guidance and operation of the state's blind vendor by setting forth the specific rights and responsibilities of the applicants to and participants in Kentucky's blind vendor program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendments update the language to reflect changes made when the Office for the Blind was merged with Office of Vocational Rehabilitation; clarifies the rights and responsibilities of the program participants and KBE; changes the amount provided for initial saleable stock; clarifies the appeal rights and explicitly states that the agency will utilize the administrative hearings process set forth in KRS 13B for full evidentiary hearings.

(b) The necessity of the amendment to this administrative regulation:

Changes to the regulations were needed to update the regulation to the statutory merger of the Office for the Blind with the Office of Vocational Rehabilitation and clarify the rights and responsibilities of the participants and the agency. (c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by setting forth the specific guidance needed to implement the program as set forth in the authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes:

No answer provided.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment provides more specific guidance to the program participants and the agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

30 Blind Vendors and all future blind vendor applicants

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are no new costs to the individuals, staff or businesses affected. (c) As a result of compliance, what benefits will accrue to the entities identified in question (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

No answer provided.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No additional costs are expected.

(b) On a continuing basis:

The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Federal Rehabilitation Funds received by the Department of Vocational Rehabilitation and the set-aside fees generated by the program itself which are established in the authorizing statute pursuant to federal law.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no increase in fees or funding necessary to implement this amendment to the existing regulation. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No answer provided.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Office for Vocational Rehabilitation, Department for Workforce Investment, Education and Workforce Development Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS Chapter 13B, 61.870-61.884, 163.470(11), 438.310, 163.470(5) and (9); 20 U.S.C. 107-107f, 34 C.F.R. Part 361.38, 395,

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

None.

(d) How much will it cost to administer this program for subsequent years?

None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):No additional revenues

Expenditures (+/-):No additional expenses

Other Explanation: