

CHAPTER 7
BUSINESS ENTERPRISES PROGRAM

[Prior to 7/1/87, see Blind, Commission for[160] Ch 4]

[Prior to 9/21/88, see Blind, Division for the[423] Ch 7]

111—7.1(216D) History and function. The Randolph-Sheppard Act (Public Law 74-732), first adopted by Congress in 1936, created a business enterprises program to give priority to the needs of blind persons in securing employment and economic opportunities. This legislation was revised in 1954 (Public Law 83-565) and again in 1974 (Public Law 93-516).

The Iowa business enterprises program prepares individuals in the vocational rehabilitation program to become independent operators of food service facilities by providing training in management skills, food service and sanitation laws, and business systems. The business enterprises program establishes facilities and renders ongoing consultation and management assistance to blind operators.

111—7.2(216D) Definitions. The following definitions apply to this chapter:

“Active licensee” means a licensed vendor who is currently operating a vending facility in this state.

“Active participation” means routine consultation with the committee of blind vendors on all matters affecting the business enterprises program. When Congress amended the Randolph-Sheppard Act in 1974 to include a requirement for a committee of blind vendors elected by the vendors themselves in every business enterprises program, congressional intent was to create a routine, ongoing method for the citizens involved in the vending program to participate in the decisions that affected their lives, given a long history of agency decision making that had excluded vendors. While Congress recognized that officials of state agencies are charged with the responsibility of making decisions, Congress wished to create a situation in which these officials routinely consult the persons whom these decisions affect. Thus, “active participation” consists of the manager of the business enterprises program and also the director of the entire agency making a conscious effort to include the committee routinely in policy decisions, in changes of policy, in decisions that will expand or contract the program, in allocation of funding, and in any other matter that will affect individual vendors or the program vendors or the program as a whole.

“Agreement” means a written instrument entered into between the department and a vendor authorizing the vendor to operate a vending facility or facilities at a specific location and setting forth the respective responsibilities of the parties.

“Blind” refers to the condition of an individual who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual 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 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 to an angle of no greater than 20 degrees.

“Blind licensee” or *“licensee”* means a blind individual licensed by the department pursuant to these rules.

“Business enterprises program” means all activities of the department relating to vending facilities on federal, state or other property.

“Committee” means the state committee of blind vendors which actively participates in routine, ongoing policy making for the business enterprises program.

“Federal property” means any building, land or other real property in this state which is owned, leased or occupied by any department, agency or instrumentality of the United States (including, but not limited to, the Department of Defense, the Department of Veterans Affairs and the United States Postal Service).

“Federal regulations” means the rules established for Randolph-Sheppard Act programs by the U.S. Department of Education in 34 CFR 395 (as published in 1977).

“Food service” means the goods and services customarily offered by restaurants, cafeterias, snack bars or vending machines for food or beverages.

“Inactive licensee” means a licensee who is not currently operating a vending facility in this state.

“*License*” means a written instrument issued by the department to a blind individual authorizing that individual to operate a vending facility on federal, state or other property.

“*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 the operation of vending facilities operated by department licensees. “Management services” does not include services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.

“*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 vendors after deducting the cost of the sale and other expenses.

“*Other property*” means property which is not federal property on which vending facilities are established or operated by the department’s business enterprises program.

“*Permit*” means the official approval given to the department by a department, agency or instrumentality in control of the maintenance, operation and protection of federal or state property, or the person in control of other property whereby the department is authorized to establish a vending facility.

“*Probation*” means a disciplinary action not to exceed one year during which an operator is again attempting to meet program requirements and standards.

“*Provisional*” means a temporary arrangement for a first-time operator pending a permanent assignment to a facility.

“*Public office building*” means the state capitol, county courthouses, city or town halls and all other buildings used primarily for governmental offices of the state, county, city or town. It does not include public schools or buildings at institutions of the state board of regents or the state department of human services. “Public office buildings” are included in the term “other property.”

“*Randolph-Sheppard Act*” means Public Law 74-732, as amended by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Chapter 6A, Section 107.

“*Suspension*” means a temporary cessation of all rights and privileges of a licensed operator pending disciplinary judgment as to whether an operator can or cannot comply with program standards and requirements.

“*Vending facility*” means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters or other appropriate auxiliary equipment operated by vendors licensed by the department which are used for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages or other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with applicable health laws, and includes the vending or exchange of charges for any lottery authorized by state law and conducted by a state agency.

“*Vending machine*” means a coin- or currency-operated machine which dispenses articles or services. This does not include machines operated by the United States Postal Service for the sale of postage stamps or other postal products or services, machines providing services of a recreational nature, or telephones.

“*Vending machine income*” means receipts (other than those of a licensed 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 licensed vendor) by a commercial vending concern which operates, services or maintains vending machines on federal property for, or with the approval of, a department, agency or instrumentality of the United States.

“*Vendor*” means a blind individual licensed by the department who is operating a vending facility on federal, state or other property. (See “active licensee.”)

111—7.3(216D) State committee of blind vendors. There is established a state committee of blind vendors which will advise and actively participate in routine, ongoing policy decisions made by the department in the management of the business enterprises program. The committee will hold a minimum

of three meetings in each calendar year with the agenda for each meeting jointly prepared by the division administrator of the business enterprises program in consultation with the chairperson of the committee.

7.3(1) The committee shall:

a. Actively participate with the department in decisions and policy and program development decisions affecting the overall administration of the business enterprises program including, but not limited to, changes in longstanding policy, decisions to add or remove locations, decisions regarding terms of permits varying from the standard permits, and all other decisions or changes in decisions that will affect the earning potential or promotional opportunities for vendors in the program or those who join the program;

b. Receive and transmit to the department grievances at the request of vendors and serve as an advocate for vendors in connection with these grievances;

c. Actively participate with the department in the development and administration of a state system for the transfer or promotion of vendors;

d. Actively participate with the department in the development of training and retraining programs for vendors; and

e. Sponsor, with the assistance of the department, meetings and instructional conferences for vendors and trainees of the business enterprises program.

7.3(2) The committee shall be composed of five vendors who will be elected for two-year terms. One member shall be elected to serve as chairperson. There is no limit to the number of terms an individual may serve.

To the extent possible, the committee membership shall be fully representative of active licensees on the basis of geography and vending facility type, with a goal of providing for proportional representation of vendors on federal property and vendors on other property.

7.3(3) The division administrator of the business enterprises program will serve as an ex officio, nonvoting member of the committee.

7.3(4) If a member of the committee ceases to be an active licensee or resigns from the committee, a replacement shall be elected for the remainder of the unexpired term at the next statewide meeting of vendors.

111—7.4(216D) Statewide meeting. There will be an annual statewide meeting of vendors at a time and place established by the department and the committee. All licensees, trainees and all other interested parties shall attend this meeting; however, only active licensees shall have the right to vote. Failure to attend two consecutive entire meetings without a written excused absence from the administrator of the business enterprises program shall result in placement of active licensees on probation. Failure to attend three consecutive entire meetings without a written excused absence from the administrator of the business enterprises program shall result in termination of the operating agreement (defined in 111—7.12(216D)).

111—7.5(216D) Election of committee members. The department will provide for a biennial election of committee members which will take place in even-numbered years during the last calendar quarter.

7.5(1) Participation in the election shall be limited to active licensees, and shall not be contingent upon payment of dues or other fees.

7.5(2) The election shall be held by secret ballot. Committee members shall take office immediately following the meeting at which they were elected.

111—7.6(216D) Program selection procedures. The department has established a clearly defined process through which all applicants for the business enterprises program are screened, trained and placed in facilities. The following procedures will be utilized in assessing applicants for participation in the business enterprises program:

7.6(1) The vocational rehabilitation counselor has the primary responsibility for identifying potential applicants for the business enterprises program. In order for an eligible individual to be considered for

placement in the business enterprises program, the counselor must make a written recommendation to the division administrator of the business enterprises program.

7.6(2) Each applicant must complete a selection pretest administered by the department.

7.6(3) The committee may advise the division administrator of the business enterprises program in the selection of trainees and may conduct a personal interview with an applicant.

7.6(4) In making a determination concerning acceptance of an applicant into the business enterprises program, the department will adhere to an established rating system which includes the following:

a. Verification that eligibility guidelines for the program have been met as follows: the individual is legally blind, a U.S. citizen and a resident of the state of Iowa;

b. A 70 percent minimum score on the recruiting referral sheet submitted by the vocational counselor;

c. A 70 percent minimum score on the selection pretest; and

d. A 70 percent minimum score on the personal interview conducted by the department or the committee (if appropriate).

In addition, the department may consider whether there is a reasonable expectation that a vending facility will become available at an appropriate time for the individual or whether there is a reasonable expectation that the individual being considered will be successful.

7.6(5) The department will advise the applicant in writing of the acceptance or rejection of the application.

111—7.7(216D) Preplacement agreement. Upon acceptance into the business enterprises program, the applicant will execute a preplacement agreement with the department which will include:

1. The placement of the individual in trainee status until successful completion of the training program;

2. The requirement that the individual must successfully complete all components of the training program;

3. The proposed training program for the individual;

4. The assurance that if a vending facility location is available, the trainee will be given equitable participation in the system of transfer or promotion for vendors;

5. A clear understanding of the alternatives if a vending facility location is not available upon completion of the training program or if the individual does not successfully complete the training program; and

6. The procedures for periodic evaluation of the trainee.

111—7.8(216D) Licensure. In accordance with federal and state laws and regulations, each participating vending facility operator must be licensed by the department. The license is not transferable and is revocable for cause.

7.8(1) The requirements for obtaining a license are:

a. The applicant must be blind according to the definition in 111—7.2(216D);

b. The applicant must be a citizen of the United States;

c. The applicant must be a resident of the state;

d. The applicant must demonstrate competency which is measured by the ability to operate a vending facility by either successful completion of the training program (if a trainee) or by successful completion of a program competency test with a minimum score of 70 percent (if applying for licensure by reinstatement or reciprocity); and

e. The applicant must possess a current and valid Iowa department of transportation nondriver identification card.

7.8(2) When a trainee successfully completes the training program, a written recommendation for licensure will be made to the director by the division administrator of the business enterprises program. The recommendation will certify that the trainee meets all licensure requirements.

7.8(3) The director shall issue an official license to the individual which shall be numbered and shall indicate the date of issuance.

111—7.9(216D) Licensure by reciprocity or reinstatement. A vending facility operator formerly licensed in this state may apply to the director for reinstatement of licensure. A vending facility operator licensed or formerly licensed in any other state in accordance with applicable federal regulations may apply to the director for licensure by reciprocity.

7.9(1) The individual must sign a release of information for each state where the individual participated in a vocational rehabilitation program.

7.9(2) The individual must meet the following criteria for licensure by reciprocity or reinstatement:

- a.* Apply and be found eligible for vocational rehabilitation services from the department;
- b.* Have no outstanding debts with the business enterprises program or vocational rehabilitation program in any state and no delinquent business taxes or delinquent bills to food service suppliers;
- c.* Comply with all licensing requirements of the department.

111—7.10(216D) System of transfer or promotion for vendors. In coordination with the state committee of blind vendors, the department has established a state system of transfer or promotion for licensed vendors.

7.10(1) When a new vending facility is established or when a vacancy occurs in an existing facility, the department shall first provide the opportunity for transfer or promotion to licensees having priority status. At that time, the department shall give priority status to a vendor who has been displaced from a facility through no fault of the vendor. A vendor shall be considered to have been displaced through no fault of the vendor if the building in which the vendor's facility is located has:

- a.* Closed; or
- b.* Lost a substantial portion of its population so that the facility no longer meets the financial guidelines of profitability established by the business enterprises program.

7.10(2) If the department does not select a vendor with priority status for the transfer or promotional opportunity, all active and inactive licensees and trainees will be notified in writing of the availability of transfer or promotion. The notice will provide the following information concerning the transfer or promotional opportunity:

- a.* The location of the available facility;
- b.* The operating requirements of the facility;
- c.* The potential or actual gross earnings of the facility; and
- d.* The deadline for submission of applications.

7.10(3) The committee will evaluate the applications on the basis of the following criteria:

- a.* Ability to meet the requirements of operating the facility;
- b.* Trainee reports or performance evaluation scores obtained during the preceding five years;
- c.* Work attitudes, including good customer relations, cooperation with property management, and participation in instructional conferences;
- d.* Knowledge and application of sound business practices, including adequate and accurate accounting procedures, maintenance of reasonable productivity standards, cleanliness and sanitation, and reasonable return related to the volume of business; and
- e.* Timely filing of specified documents, reports and fees with the department.

When the same score is received by two vendors, the number of years that the vendor has been actively licensed in the Iowa program will be the deciding factor in awarding the transfer or promotion.

7.10(4) The final appointment for all transfers and promotions will be made by the director of the department. Before making this decision the director will review the recommendation of the committee and the division administrator. All applicants and the committee will be notified in writing regarding the decision for appointment.

7.10(5) A licensee requesting facility priority for assignment through transfer or promotion must first receive a formal recommendation for such from the committee. The request for recommendation from the committee must be submitted in writing within 30 days of facility closure, and the licensee shall appear in person to ask for the recommendation. Priority shall only be considered when the facility is closed through no fault of the licensee.

7.10(6) After the recommendation has been received, it will be forwarded to the director, Iowa department for the blind, for written approval or denial within 30 calendar days.

7.10(7) If the licensee receives committee and department approval for priority, the program administrator, business enterprises program, shall issue a formal written statement within 30 calendar days to the licensee, advising the licensee of priority status for transfer or promotion.

7.10(8) If a licensee is not recommended for priority status, the program administrator shall issue a formal written notice to the licensee within 30 calendar days, indicating why priority status was not granted.

7.10(9) In order for a licensee to qualify for priority status, the following criteria must be met: an average score of 90 or above for the past five years on inspection reports and bid evaluation scores, and an average of “meets standards” on performance evaluations.

7.10(10) Priority shall only be issued for facilities of comparable type and size to the facility formerly operated by the licensee. Facility types are cafeteria or vending. Comparable size shall be determined by approximately 25 percent of the gross sales at the vacant facility over and above the gross sales of the facility formerly operated by the licensee where priority is requested.

7.10(11) Priority status shall be limited to a two-year period, which shall commence at date of issuance. If a licensee is offered an equivalent facility during that period and does not accept assignment, priority status shall be terminated in writing, unless the committee and department determine that there are extenuating circumstances where the licensee cannot accept assignment.

7.10(12) If no equivalent facility becomes available during the two-year priority period, the licensee may apply in writing to the committee and department for a one-year extension. If, at the end of the additional year, no equivalent facility is available, the licensee may apply in writing for a second and final one-year extension through the committee and department. The initial two years, plus the two extensions, must be consecutive. All granted extensions shall be in writing from the program administrator, business enterprises program.

7.10(13) Actions pursuant to rule 7.10(216D) are subject to appeal procedures of this chapter and the procedures in 111—Chapter 8.

111—7.11(216D) Placement and performance evaluation. The staff of the business enterprises program will complete a periodic performance evaluation of each vendor based on criteria developed by the staff and the state committee of blind vendors. Vendors in provisional status will be evaluated every three months and vendors in permanent status will be evaluated annually.

7.11(1) Placement in provisional status. When a vendor is appointed for the first time, the vendor will be placed in provisional status. The vendor will be provided with the rating criteria for performance evaluation as a part of the operating agreement (defined in 111—7.12(216D)). A vendor cannot remain in provisional status for longer than two years.

7.11(2) Placement in permanent status. When the vendor has received satisfactory ratings on at least two consecutive performance evaluations, the vendor will be placed in permanent status. Failure to achieve permanent status within 12 months shall result in the provisional operator being placed on probation.

111—7.12(216D) Operating agreement. Upon appointment of a vendor to a vending facility, the department shall execute an operating agreement with the vendor which shall detail the rights and responsibilities of the vendor and of the department in the operation of the facility.

111—7.13(216D) Reports. As specified in the operating agreement, reports must be filed with the administrative office of the department or postmarked by the fifteenth day of each month. The department will accept no more than two consecutive reports which are submitted after the deadline. When an operator exceeds this limit, the department shall impose a fine in the amount of \$100 for each report filed after the deadline. Operators submitting more than two late reports shall be placed on probation and restricted from bidding for transfer or promotion for a period of one year. For a report to be considered complete, it must contain the following documents which relate to the reporting period:

1. A profit and loss statement;
2. A signed bill verification statement;
3. Business-related tax documents; and
4. Canceled checks verifying payment of business-related taxes.

111—7.14(216D) Vending facility inventory. The department shall purchase the initial inventory for each vending facility. Upon assignment of a new operator to the facility, the department, the outgoing operator, and the incoming operator shall establish the value of the inventory.

Upon inventory settlement, the operators and the department shall use the following procedure:

1. The department shall pay the operator who is due funds for the inventory difference.
2. The indebted operator who owes money for the inventory shall negotiate a satisfactory payment plan to reimburse the department.

111—7.15(216D) Maintenance and replacement of equipment. It is the responsibility of the vendor to maintain all vending facility equipment in good repair and in attractive condition. When equipment becomes obsolete or no longer repairable, it is the responsibility of the department to replace the equipment.

7.15(1) During the first 45 calendar days of the vendor's assignment to a location or facility, the department assumes the responsibility for maintenance of equipment. Additionally, in unusual circumstances, the department may negotiate with a vendor to pay particular costs for maintenance of equipment.

7.15(2) If, in accordance with the operating agreement, the vendor does not appropriately maintain equipment and this prohibits operation of the facility in a safe, attractive and sanitary manner, the department will assume responsibility for making needed repairs and bill the vendor for the repairs.

7.15(3) The department retains title to all equipment purchased by the department.

111—7.16(216D) Distribution and use of income from vending machines on federal property. Vending machine income from vending machines located on federal property which has been disbursed to the department by a property management department, agency, or instrumentality under the vending machine income sharing provisions of 34 CFR 395.8 shall accrue to each vendor operating a vending facility on federal property in an amount not to exceed the average net income of the total number of vendors in the state as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any vendor in any amount exceeding the average net income of the total number of vendors in the United States.

7.16(1) No vendor shall receive less vending machine income than that received during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

7.16(2) No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such a facility is maintained, serviced and operated by a vendor.

7.16(3) The department shall retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amounts eligible on a quarterly basis.

7.16(4) The department will disburse vending machine income to vendors on a quarterly basis.

7.16(5) Vending machine income retained by the department may be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, for provisions of paid sick leave and vacation time for vendors, or for the maintenance and replacement of equipment. Use of this income shall be approved by a majority vote at an annual statewide vendor meeting.

111—7.17(216D) Disciplinary action. The department may impose any or all of the following disciplinary sanctions as appropriate:

7.17(1) Fines. Monetary fines shall be imposed by the department for the late filing of required reports or late payment of fees.

7.17(2) Probation. The department may place a vendor on probation of the operating agreement for a period not to exceed one year. The probationary period may include an emergency suspension of the operating agreement when appropriate for a period not to exceed 30 days. If the operator is deemed to be on probation after the end of that year, the operating agreement will be terminated.

a. Probation may occur when the department determines that any of the following conditions exist:

- (1) The vendor has repeated or continued violations of the terms of the operating agreement;
- (2) The vendor has repeated or continued violations of the vending facility permit;
- (3) The vendor is temporarily ineligible to participate in the business enterprises program;
- (4) The vendor is absent without leave; or
- (5) The health and safety of the public may be jeopardized by the continued operation of the vending facility by the vendor.

b. During the period of suspension, the vendor shall relinquish all rights and privileges of the vendor license.

c. The department and the vendor shall establish a clearly stated written plan and timetable for correction of the perceived deficiencies after suspension.

7.17(3) Termination of operating agreement. When the department determines that a probationary period has been unsuccessful or when the department determines and documents that serious and repeated infractions of the operating agreement or vending facility permit have occurred, the department may terminate an operating agreement.

7.17(4) License revocation. The department may revoke a license in the following conditions:

a. Improvement of vision so that the operator is no longer eligible for participation in the business enterprises program;

b. Written notification from the vendor requesting withdrawal from the business enterprises program;

c. Failure to execute an operating agreement by abandoning a facility;

d. Determination that the vendor is not competent to manage a vending facility;

e. Conviction of any felony; or

f. Determination that the vendor possesses a valid driver's license or is driving illegally without a valid driver's license.

7.17(5) Appeals. All disciplinary actions may be appealed through the administrative review and fair hearings process. (See 111—Chapter 8, Appeals Process—Business Enterprises Program, Iowa Administrative Code.)

7.17(6) Procedures. The department shall notify the vendor by certified mail of a disciplinary action. The notice will include the reasons for the action, the commencement date of the action, and the time period (if appropriate) for the action.

a. The department shall also provide notice in the alternative medium of braille, large print or on cassette tape as requested by the vendor. Documents served in alternative medium shall be served within ten working days.

b. When immediate action is crucial, the department shall deliver and read a document in person or shall telephone a vendor and read the document over the telephone as an acceptable alternative medium. When this provision is used, the vendor will be notified in writing in the appropriate medium within ten working days.

c. To facilitate the successful resolution of situations requiring disciplinary action, the department will offer management assistance and provide information concerning the administrative review and fair hearings process.

111—7.18(216D) Access to program information. A vendor will have access to program and financial data relevant to the operation of the business enterprises program. The department will furnish the vendor with a copy of the appropriate vending facility permit and operating agreement and the department's administrative rules. The department will explain these documents to the vendor who will indicate by signed statement that these documents have been furnished and explained.

111—7.19(216D) Confidentiality. The department and participants in the business enterprises program are governed by 34 CFR 361.38 (as published January 17, 2001) regarding protection, use, and release of personal information.

111—7.20(216D) Nondiscrimination. The department does not discriminate on the basis of sex, race, creed, color, national origin, religion, age or physical or mental disability.

These rules are intended to implement Iowa Code chapter 216D.

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