

## DEPARTMENT OF EDUCATION

## 34 CFR Part 395

[Docket ID ED-2024-OSERS-0088]

RIN 1820-AB83

**Amendments to Definitions and Related Provisions Under the Randolph-Sheppard Vending Facility Program**

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Education (Department) proposes to amend certain definitions and add a new definition in the Randolph-Sheppard Act (R-S Act) regulations to clarify statutory requirements and make other conforming changes necessary for Federal agencies, States, and non-governmental stakeholders to better implement the R-S Act, thereby allowing the Randolph-Sheppard Vending Facilities Program (RSVFP) to evolve with technology and ever-changing customer demand.

**DATES:** Comments must be received on or before March 11, 2025.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [www.regulations.gov](http://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that we do not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

*Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ”.

*Privacy Note:* The Department’s policy is generally to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any

information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department reserves the right to redact at any time any information in comments that identifies other individuals, includes information that would allow readers to identify other individuals, or includes threats of harm to another person.

**FOR FURTHER INFORMATION CONTACT:** Corinne Weidenthal, U.S. Department of Education, 400 Maryland Ave. SW, Room 4A212, Washington, DC 20202. Telephone: (202) 245-6529. Email: [Corinne.Weidenthal@ed.gov](mailto:Corinne.Weidenthal@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

A brief summary of the proposed rule is available at <http://www.regulations.gov/docket/ED-2024-OSERS-0088>.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

## Executive Summary

## Background

1. The R-S Act and the Need for Regulations
2. States Participating in the RSVFP; Developments in the Vending Landscape
3. Role of the Department
4. Overview of Proposed Changes

## Significant Proposed Regulations

## Articles

## Vending Facility

## Vending Machine

## Location and Operation of Vending

## Facilities for Blind Vendors on Federal Property

## Severability

## Executive Orders 12866, 13563, and 14094

## Regulatory Impact Analysis

## Background

1. Need for Regulatory Action
2. RSVFP Funding Sources  
VR Program Funds  
State Appropriations  
RSVFP Set-Aside Funds
3. Fiscal Impact of RSVFP Expenditures on the VR Program

## Discussion of Costs and Benefits Overview

## Non-Monetized Benefits of the Proposed Regulations

1. Definition of “Articles”
2. Definition of “Vending Facility”
3. Definition of “Vending Machine”
4. Priority on Certain Federal Property

## Non-Monetized Costs of the Proposed Regulations

1. Implementation of Proposed Definitions
2. Definition of “Articles”
3. Definition of “Vending Facility”
4. Definition of “Vending Machine”
5. Priority on Certain Federal Property

6. Technical Changes  
Monetized Costs of the Proposed Regulations  
1. Administrative Costs

**Executive Summary***Purpose of This Regulatory Action*

The purpose of this regulatory action is to clarify and modernize the R-S Act regulations to ensure that the RSVFP can evolve with technology and ever-changing customer demand. To achieve the employment goals of the R-S Act by keeping current with vending technology and business practices and opportunities for individuals who are blind under the RSVFP, the Department proposes to add and amend certain definitions in the R-S Act regulations that would:

- Define “articles,” thereby ensuring clarity and consistency for the scope of items that may be sold at vending facilities and by vending machines.
- Modify the definition of “vending facility” to describe the scope of business models allowed.
- Modify the definition of “vending machine” to dispense only “articles,” not services in exchange for cash or electronic payments.

The Department also proposes to make the following other changes:

- Amend the regulation pertaining to the location and operation of vending facilities for licensed blind vendors on Federal property to better implement the statute with respect to certain Federal properties.
- Add a regulatory provision pertaining to severability for part 395.

For a more detailed discussion of the purpose of this regulatory action, see the “Background” and “Significant Proposed Regulations” sections further below in this document.

The R-S Act authorizes the Secretary of Education to promulgate regulations implementing the blind vendors’ priority to operate vending facilities on Federal property and ensure that, wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States. (20 U.S.C. 107(b).) The R-S Act further directs the Secretary to establish requirements for the uniform application of the R-S Act by each State agency designated by the Secretary to license blind vendors, the State licensing agency (SLA),<sup>1</sup> including

<sup>1</sup> An SLA, as defined in 34 CFR 395.1(v), is the State Vocational Rehabilitation (VR) agency providing VR services to individuals who are blind in the State under the VR services portion of the Unified or Combined State Plan (see 34 CFR 395.2 and 395.5) and that has been designated by the Secretary of Education to issue licenses to

policies on the selection and establishment for new vending facilities, the operation of cafeterias, and distribution of vending machine income to blind vendors, as well as any other rules and regulations necessary or desirable in carrying out the provisions of the R-S Act. (20 U.S.C. 107(b), 107a(a)(1) and (6), and 107d-3(e) and (g).)

#### *Summary of the Major Proposed Provisions of This Regulatory Action*

The proposed regulations would:

- Define “articles” for the RSVFP as items of tangible personal property that can be felt or touched by an individual and can be physically relocated, thereby clarifying the wide scope of articles that may be sold through RSVFP vending facilities, including vending machines.
- Amend the existing definition of “vending facility” to state that vending facilities may be operated by blind licensees pursuant to a permit or contract, thereby removing any confusion about whether this definition applies to key requirements governing the operation of vending facilities in part 395.
- Add illustrative examples to the definition of “vending facility” to further clarify the evolving applicability of the terms “snack bars,” “cart services,” “shelters,” and “counters,” thereby promoting consistency nationwide for the RSVFP and clarifying the evolution of the term “vending facility” with technology and the capabilities of licensed blind vendors. The proposed changes to this definition would codify aspects of current Department guidance.
- Amend the existing RSVFP definition of “vending machine” by making clear that such machines sell or dispense only articles in exchange for cash or electronic payment. As a result of this proposed change, licensed blind vendors could dispense services but only through vending facilities that are not vending machines.
- Amend 34 CFR 395.30 to clarify the nature and scope of the priority that blind vendors receive at National Park Service (NPS) and National Aeronautics

individuals who are blind under the RSVFP. Therefore, there is a close administrative nexus between the State VR agency and the SLA. While the SLA and VR agency are the same entity organizationally, administratively the VR program and RSVFP operate separately and distinctly. These different administrative functions are operationalized at the State level through policy and fiscal decision-making responsibilities. In this NPRM, the Department refers to “SLA” when addressing requirements associated with the RSVFP; however, we use “VR agency” when addressing requirements, particularly those related to the use of VR funds under the VR program for the benefit of the RSVFP.

and Space Administration (NASA) properties to operate those “vending facilities” that would meet the proposed updated definition of that term, thereby better implementing the statutory priority with respect to these Federal properties.

A more detailed discussion of the proposed regulations is provided in the “Significant Proposed Regulations” section of the preamble.

#### *Costs and Benefits*

This proposed regulatory action is a significant regulatory action subject to OMB review because it raises legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in Executive Order 14094. We believe that the proposed regulations would likely result in additional net costs for the acquisition of vending facilities and equipment for some SLAs and State Vocational Rehabilitation (VR)<sup>2</sup> agencies (or organizational units of those agencies), as they replace or improve outdated equipment and identify additional or more modern vending facility opportunities for blind vendors. We also expect that the proposed regulations would result in VR agencies incurring additional costs to convert existing vending facilities from one type of business model to another and purchase initial stocks and supplies for new vending facilities to allow them to evolve with the vendors’ needs to remain competitive and self-supporting, as is the purpose of the RSVFP.

As discussed further in the Regulatory Impact Analysis (RIA) of this notice of proposed rulemaking (NPRM), the VR program is a significant funding source for many RSVFP-related costs, including those at issue in these proposed regulations. This means that States may use VR program funds (both Federal VR grant funds and non-Federal matching funds) to pay those RSVFP costs that are also allowable under the VR program. Therefore, the cost and benefits analysis of these proposed regulations will necessarily describe the critical nexus between the VR program and the RSVFP. To the extent that States use non-Federal funds to pay additional RSVFP-related costs anticipated by these proposed regulations, States may use those non-Federal expenditures to draw down more Federal VR funds that

<sup>2</sup> Although the VR program is separate and distinct from the RSVFP, section 103(b)(1) of the Rehabilitation Act of 1973 (Rehabilitation Act) authorizes State VR agencies to expend VR program funds (both Federal and non-Federal matching) for the benefit of certain RSVFP costs, such as acquisition of vending facilities and equipment and the purchase of initial stocks and supplies.

may be available to them. Specifically, for 21.3 percent of allowable costs paid with non-Federal funds, the State may draw down 78.7 percent Federal VR funds to pay the balance of the total cost.

Furthermore, we believe that the proposed regulations would benefit blind vendors and customers who use the vending facilities through increased earnings and increased product selection, respectively, to the extent the products are not already available through the vending facilities. We invite the public to comment on the economic impact of the proposed changes. For a more comprehensive discussion of costs and benefits including the VR program match requirements, please see the “Regulatory Impact Analysis” section of this document.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, you should identify clearly the specific section or sections of the proposed regulations that each of your comments address and arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall goal of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department’s programs and activities. We also welcome comments on any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect public comments about the proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* Upon request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please

contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Background

#### 1. The R–S Act and the Need for Regulations

The R–S Act, 20 U.S.C. 107 *et seq.*, provides individuals who are blind with the opportunity to operate businesses on Federal and other property, as defined in 34 CFR part 395,<sup>3</sup> through permits or contracts, with the goal of the individual becoming self-supporting. (20 U.S.C. 107(a).) To achieve this purpose, the R–S Act provides a priority to operate vending facilities on Federal property to individuals who are blind and licensed by the SLA, the State agency that provides services to individuals who are blind (*i.e.*, the VR agency that provides VR services to individuals who are blind in the State).<sup>4</sup> (20 U.S.C. 107(b).)

It is important to note that in 1954, Congress expanded the R–S Act to include vending machines as vending facilities available to blind vendors operating in Federal buildings, thereby extending a preference to blind licensees to operate these vending machines. Congress added vending machines because employee groups had excluded blind vendors from operating vending machines and used those vending machines to create significant competition with vending stands operated by blind vendors. (100 Cong. Rec. 9940, 9946 (1954); The President’s Health Recommendations and Related Matters; Hearing Before the Subcomm. On Health of the S. Comm. Of Labor and Pub. Welfare, Part 2, 83rd Cong., 384 (1954).) Congress further expanded the RSVFP by allowing blind vendors access to Federal property, not just Federal buildings, including military

<sup>3</sup> *Federal property* means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the U.S. Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States. 34 CFR 395.1(n). *Other property* means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property. 34 CFR 395.1(n). An example of “other property” is a vending facility on State property established with proceeds from unassigned Federal vending machine income (*i.e.*, unassigned income from vending machines located on Federal property).

<sup>4</sup> See footnote 1 for a description of the organizational and administrative relationship between the SLA and VR agency in each State that operates the RSVFP. This NPRM’s RIA will provide a comprehensive discussion of the nexus between the two, particularly with respect to the funding of the RSVFP.

posts and atomic centers. (100 Cong. Rec. 9943–9944 (1954).)

To ensure consistent implementation of the priority for blind vendors on Federal and other property nationwide, the R–S Act (20 U.S.C. 107e(7)) defines “vending facility” as automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment necessary for the sale of the articles and services described in 20 U.S.C. 107a(a)(5) and which may be operated by blind licensees. Section 107a(a)(5) states that the vending facilities operating on Federal and other properties under permits issued to the SLAs may sell newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all the health laws, as determined by the SLA, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

Although the R–S Act’s definition of “vending facility” specifically mentions certain types of business models popular when the statute was enacted in 1936 and amended in 1954 and 1974 (*i.e.*, vending machines, cafeterias, snack bars, cart services, shelters, and counters), the statute does not further define those terms with respect to their facilities or business models, and neither do the Department’s current RSVFP regulations. The lack of specificity as to these enumerated types of facilities has led to inconsistency with the implementation of the “vending facility” definition across the country.

According to the Department’s Program Assistance Circular (PAC)–89–02, dated January 3, 1989, RSVFP vending facilities historically fell into one of the following categories, with some facilities representing combinations of these categories:

- dry or sundry facilities;
- snack bars, which may involve the sale of food prepared on/off the premises;
- cafeterias; and
- automatic vending machines.

In addition to mentioning certain examples of business models for the RSVFP but providing little guidance regarding their scope, the R–S Act permits vending facilities to sell “other articles or services dispensed automatically or manually,” without defining the nature and scope of those “other articles or services” or defining the term “articles” itself. The lack of a definition for the term “articles” or the

phrase “other articles or services” has led to inconsistency under the RSVFP.

Since the inception of the RSVFP, vendors have pursued these business models as vending facilities and with changes in technology, have pursued more modern versions of the business models identified in the definition of “vending facility.” In recent years, the Department has received an increasing number of inquiries from SLAs and licensed blind vendor constituent groups concerning the allowability of these newer business models under the RSVFP and the allowable funding sources to pay for such activities. In fielding these inquiries, the Department learned that there is inconsistency nationwide with the implementation of the RSVFP, with some States forging ahead to modernize while some remain locked in tradition, not enabling vendors to evolve or expand their vending facilities to keep up with customer demands or competition.

To minimize inconsistency among the States and address identified areas of confusion, the Department issued a guidance document in 2024 for implementation of the RSVFP, which is relevant to the content of this NPRM. On August 13, 2024, the Department issued Technical Assistance Circular (TAC)–24–06, “Allowable Costs for Vending Facilities and Equipment for Vendors under the Randolph-Sheppard Vending Facility Program,”<sup>5</sup> which describes existing Federal requirements applicable to vending facilities and equipment acquired for the benefit of the RSVFP. In so doing, the Department hoped to help VR agencies and SLAs implement the requirements appropriately and consistently, given the evolution of the RSVFP since it was first introduced in connection with the VR Program in 1954,<sup>6</sup> making certain RSVFP-related costs allowable under the VR program.

Although TAC–24–06 provides much needed guidance to States about the flexibilities afforded by the R–S Act regarding the nature and scope of allowable business models that can exist and articles that can be sold under the RSVFP, questions persist. Specifically, some SLAs and Federal agencies are reluctant to allow licensed blind vendors to take advantage of all allowable opportunities under the RSVFP, particularly those not

<sup>5</sup> TAC–24–06 is on RSA’s website at <https://rsa.ed.gov/about/programs/randolph-sheppard-vending-facility-program/legislation-regulations-and-sub-regulatory-guidance>.

<sup>6</sup> The R–S Act, initially enacted in 1936, was amended by the Vocational Rehabilitation Amendments of 1954, which created a nexus between the VR program and the R–S Act.

considered traditional RSVFP opportunities. Therefore, inconsistency in implementation of the RSVFP remains, making this NPRM necessary for the RSVFP, as well as the VR program, which is the primary source of funding for the RSVFP in States operating the RSVFP.

## 2. States Participating in the RSVFP; Developments in the Vending Landscape

There are 51 SLAs across the country, which include 49 U.S. States,<sup>7</sup> the District of Columbia, and Puerto Rico. The State of Wyoming and other territories do not participate in the RSVFP. However, Wyoming and any territory not participating in the RSVFP could apply to the Department to do so at any time since they meet the definition of “State” for purposes of the RSVFP. Under the RSVFP, SLAs recruit, train, license, and place individuals who are blind as operators of vending facilities, established through permits or contracts on Federal and other property in the State. Most States have enacted laws or promulgated regulations modeled on the R–S Act and include a priority for blind vendors at State, county, municipal, and certain private locations.

In January 2012, President Obama issued a memorandum to the heads of executive departments and agencies emphasizing the importance of Federal support for the RSVFP. (77 FR 3915 (Jan. 25, 2012).) That memorandum recognized that blind entrepreneurs had demonstrated a “proven ability” to provide exceptional service and “have challenged preconceived notions about disability,” citing successfully operated food services and commercial ventures, “from a simple snack shop, to tourist services at the Hoover Dam, to full food-services operations at military installations.”

Further, technological and business landscapes have changed considerably over the last 50 years, providing expanded employment opportunities for blind vendors and, therefore, offering a wider array of vending opportunities from which to draw. Some blind vendors now operate retail facilities such as micro markets and gift shops

and continue to explore new employment opportunities not considered to be those traditionally operated under the RSVFP. Blind vendors also operate commissaries in prisons that include such non-food items as clothing, cosmetics, and hygiene items, and provide laundry services, as well.

In Fiscal Year (FY) 2023, 43 of the 51 SLAs operated vending machines at rest areas along the interstate highways,<sup>8</sup> ranging from two to 57 rest areas within each State for a total of 1,019 rest areas managed by SLAs. Of these rest areas, 647 (63 percent) were operated by blind vendors, and the remaining 372 rest areas (37 percent) were operated by third party vendors. The Department believes, based upon its own observations and stakeholder feedback, many blind vendors sell products other than food items, such as tee shirts, baseball caps, and phone chargers, in vending machines located at these rest areas.

RSA’s Annual Reports to the President and Congress show that the RSVFP has experienced a decline over time in the number of blind vendors and the number of facilities operated by blind vendors.<sup>9</sup> Since FY 2013, the number of blind vendors has steadily declined from a total of 2,173 in FY 2013 to 1,428 in FY 2023, which represents a 34.3 percent decrease of vendors over a ten-year period.<sup>10</sup> The overall number of facilities (Federal and non-Federal) operated by blind vendors fluctuated over the same ten-year period; however, the number of Federal facilities operated by blind vendors decreased from 864 in FY 2013 to 635 in FY 2023 representing a 26.6 percent decrease in the operation of Federal facilities over a ten-year period.<sup>11</sup> Recent reasons for the declines include the COVID–19 pandemic in FYs 2020 and 2021, which resulted in the closure of Federal and other buildings.

While the number of vendors and Federal facilities have decreased over this ten-year period, with the exception of those fiscal years impacted by the COVID–19 pandemic (FYs 2020–2022), gross sales and vendor earnings have increased. In FY 2019, the last full fiscal year before the pandemic, gross sales for

the program were \$717,007,108, while in FY 2023, the amount rose to \$747,455,376, an increase of 4.2 percent from FY 2019. Likewise, vendor income increased from \$130,783,764 in FY 2019 to \$147,206,158 in FY 2023, an increase of 12.5 percent during this time period.

## 3. Role of the Department

Because Congress determined in 1974 that some Federal agencies were failing to implement the R–S Act, it placed the authority for the administration of the R–S Act with the Department of Health, Education, and Welfare (HEW). The Committee Report relies heavily on a General Accountability Office (GAO) report from 1973 studying the RSVFP nationwide to support many of the 1974 amendments to the R–S Act. The Comptroller General found that States reduced efforts to survey Federal sites for possible vending facility locations, “particularly military and postal facilities,” because of the lack of success in obtaining permits or contracts at these locations. (Review of Vending Operations on Federally Controlled Property, No. B–176886, p. 13 (1973).)

The Committee indicated that the amendments assigned HEW new responsibilities and authorities, which were previously held by each department, agency, and instrumentality of the United States. (Sen. Rep. 93–937 pp. 15–19 (1974).) The Committee went further to find “there is a record of abuses and neglect of the Randolph-Sheppard program by officials of various Federal agencies that is adequate to justify the placement of increased overall authority for its operation with the Secretary of Health, Education, and Welfare.” (*Id.* at 16.) When Congress divided HEW into the Department of Health and Human Services and the Department of Education, it transferred the authority for the administration of the R–S Act to the Department of Education. (Sec. 301(4)(B) of the U.S. Department of Education Organization Act, Public Law 93–88, 93 Stat. 678 (1979).)

The R–S Act provides that “The Secretary of Education shall—insure that the Rehabilitation Services Administration is the principal agency for carrying out this chapter.” (20 U.S.C. 107a(a)(1).) As the principal agency to administer the R–S Act, the Rehabilitation Services Administration (RSA) within the Office of Special Education and Rehabilitative Services in the Department has the authority to promulgate regulations designed to assure the priority to operate vending facilities is given to licensed blind persons and that wherever feasible, one or more vending facilities are

<sup>7</sup> For purposes of the RSVFP, “State” means “a State, territory, possession, Puerto Rico, or the District of Columbia” (34 CFR 395.1(t)). Although the definition of “State” in the R–S Act and its regulations includes “possessions,” since the dissolution of the Trust Territory of the Pacific Islands, the United States does not have any “possessions” that have their own local governments. Therefore, there are no “possessions” relevant to the RSVFP discussion or this NPRM. See e.g., <https://www.irs.gov/individuals/international-taxpayers/persons-employed-in-us-possessions>.

<sup>8</sup> In addition to the priority to operate vending machines on Federal property under the R–S Act, the Surface Transportation Act requires that, in placing vending machines at highway rest areas, States give priority to vending machines operated under the RSVFP (23 U.S.C. 111(c)).

<sup>9</sup> RSA Annual Reports to the President and Congress are on RSA’s website at <https://rsa.ed.gov/about/rsa-annual-reports-to-congress>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States. (20 U.S.C. 107(b).)

In addition, the Secretary is directed to establish requirements for the uniform application of the R-S Act by each SLA, including policies on the selection and establishment for new vending facilities, the operation of cafeterias, and distribution of vending machine income to blind vendors, as well as any other rules and regulations necessary or desirable in carrying out the provisions of the R-S Act. (20 U.S.C. 107a(a)(1) and (6), and 107d-3(e) and (g).)

In support of the uniform application of the RSVFP, the Department regularly publishes TACs to provide updated guidance and clarify the R-S Act and its regulations as circumstances require. As an example, RSA has issued TACs on the active participation of the Elected Committee of Blind Vendors with SLAs in the RSVFP (RSA-TAC-21-01), the application of the R-S Act priority for blind vendors on Federal property related to the operation of vending machines and the use of contractors on that property (RSA-TAC-21-02), the process for RSA's approval of State Rules (RSA-TAC-22-01), and the use of VR program funds for initial stocks and supplies and initial operating expenses for blind vendors under the Randolph-Sheppard vending facilities program (RSA-TAC-24-03), as well as TAC-24-06 discussed previously.<sup>12</sup>

In addition, RSA and the U.S. AbilityOne Commission (AbilityOne) executed a Memorandum of Understanding that establishes a process for AbilityOne and RSA to work more closely together. AbilityOne identifies the opportunities presented to it that may be appropriate opportunities for persons who are blind to operate vending facilities under the R-S Act and provides information about those opportunities to RSA, who determines whether the opportunities merit review by the appropriate SLA, who decides if it will pursue them under the R-S Act's priority.<sup>13</sup>

<sup>12</sup> The five RSVFP-related TACs mentioned herein are on RSA's website at <https://rsa.ed.gov/about/programs/randolph-sheppard-vending-facility-program/legislation-regulations-and-sub-regulatory-guidance>. RSA's website includes information related to the *Memorandum of Understanding Between the Committee for Purchase from People who are Blind or Severely Disabled and the U.S. Department of Education Rehabilitation Services Administration* (Jan. 2021). <https://rsa.ed.gov/about/programs/randolph-sheppard-vending-facility-program/resources>.

<sup>13</sup> RSA's website includes information related to the *Memorandum of Understanding Between the*

The Department's proposed changes in this NPRM would confirm the applicability of the RSVFP on any Federal or other property subject to the R-S Act, except as otherwise provided by statute. As directed by the R-S Act, the Secretary, through the RSA Commissioner, consulted with heads of departments and agencies when proposing these regulations implementing the RSVFP. (20 U.S.C. 107(b).) However, the R-S Act, as amended in 1974, makes clear that the Department is the "principal agency" responsible for carrying out the statute and promulgating implementing regulations.

#### 4. Overview of Proposed Changes

In recent years, RSA has learned of varied applications in the operation of the RSVFP by the SLAs, Federal agencies, and blind vendors with respect to the types of vending facility business models permitted and the types of articles dispensed. The Department proposes to clarify and modernize the program's regulatory definitions to continue advancement of economic opportunities for blind vendors and to evolve with modern trends in business practices and vending technology, many of which already exist within the RSVFP, with the goal of ensuring the regulations best implement the statute. To that end, the Department has determined it is necessary to amend the RSVFP regulations in three overarching ways.

First, the Department proposes to define the term "articles," as it is authorized to do while administering and implementing the RSVFP, thereby clarifying the broad scope of items that can be sold. In so doing, the Department would improve consistency nationwide with respect to articles currently sold by RSVFP vendors and provide further clarity for the breadth of articles that could be sold or dispensed as the RSVFP continues to evolve.

Second, the Department proposes to provide illustrative examples of the scope of business models allowed as a "vending facility" to address how the types of business models named in the statute apply in a modern context. In proposing these changes, the Department studied the legislative history of the R-S Act, dating back to its enactment in 1936. While Congress took care to identify specific business models and articles that are permissible under

*Committee for Purchase from People who are Blind or Severely Disabled and the U.S. Department of Education Rehabilitation Services Administration* (Jan. 2021). <https://rsa.ed.gov/about/programs/randolph-sheppard-vending-facility-program/resources>.

the RSVFP, Congress also made clear in legislative history and in the text of the statute that neither the term "vending facility" nor the term "articles" were intended to be construed narrowly. For example, the 1974 legislative history made clear that the concept of a "vending facility" was meant to reflect the capability of blind vendors to operate extensive and sophisticated businesses. (Sen. Rep. 93-937 at 25 (June 17, 1974).) At the time, Congress expressed concern about the deployment of technological advances that competed with vending stands, specifically the vending machine, to circumvent "the intent and spirit of the Congress" when it passed the R-S Act. (Sen. Rep. 93-937 at 6.) Congress amended the statute with the goal of protecting blind vendors "in light of the new inventions." *Id.* The best reading of the statute is that Congress intended for the term "vending facility" to be construed broadly and in a manner capable of protecting the interests of blind vendors through potential evolutions in the concept of vending.

With respect to the articles to be sold, Congress not only added the catch-all phrase of "other articles" to signal that the list mentioned in the statutory definition of "vending facility" is not exhaustive, but also included legislative history with the 1974 amendments to describe its intent. With these proposed clarifying changes, the Department believes the RSVFP regulations would be applied more consistently nationwide over time as the vending industry evolves and customer needs and demands for vended articles change, while staying faithful to the statutory text and congressional intent.

Third, the Department proposes to make clear that "a vending machine" dispenses only "articles," not services. In so doing, the Department would ensure the RSVFP regulations are consistent with Congressional intent that vending machines would dispense articles of a tangible nature while still ensuring the continued advancement of economic opportunities for blind vendors. Under the proposed regulation, blind vendors could continue to provide services at vending facilities and thus, the proposed regulation is not intended to limit any currently known vending opportunities with respect to services.

In addition to the above three overarching proposed changes to the RSVFP regulations, the Department proposes to make corresponding changes to 34 CFR 395.30. In so doing, the Department would ensure that the proposed updated definition of "vending facility" would apply to those

RSVFP vending facilities on NPS and NASA properties.

Last, the Department proposes to add a provision to reflect the Department's intent that the regulatory provisions in the RSVFP regulations are severable.

We believe that these proposed regulations would add clarity to the RSVFP with respect to advances in vending technology and new vending opportunities and minimize confusion for Federal agencies, State agencies that administer the RSVFP, and blind vendors. With this added clarity, we anticipate there would be increased consistency among the SLAs in terms of the implementation of the RSVFP nationwide, particularly with the types of vending facility opportunities available and the articles sold nationwide by blind vendors. In so doing, we believe these proposed regulations would further the legislative purpose of the R-S Act to assist individuals who are blind to become self-supporting.

### Significant Proposed Regulations

#### Articles

*Statute:* The statute uses the term "article" in the definition of "vending facility" at 20 U.S.C. 107e(7) and 107a(a)(5), describing what blind vendors can sell—newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services, as well as chances for any lottery authorized by State law and conducted by an agency of a State.

*Current Regulations:* The term "article" is used in the regulatory definition of "vending facility" at 34 CFR 395.1(x) in the same way it is used in the statute. It is also used in the definition of "vending machine" at 34 CFR 395.1(y) to refer to what a vending machine can dispense—"articles or services."

*Proposed Regulations:* The Department proposes to amend 34 CFR 395.1 by adding a new paragraph (cc) that would define "articles" as items of tangible personal property that can be felt or touched by an individual and can be physically relocated. This proposed definition would apply throughout 34 CFR part 395, including as used in the definitions of "vending facility" and "vending machine," §§ 395.1(x) and (y), respectively.

*Reasons:* The Department proposes to define "articles" to clarify the definitions of "vending facility" and "vending machine" in 34 CFR 395.1(x) and (y), respectively, since the term "articles" is used in both definitions but is undefined. For purposes of the RSVFP, there is a wide breadth of what

could constitute "articles" that are dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws. The proposed new definition would further clarify that the scope of articles dispensed or sold at vending facilities and by vending machines for purposes of the RSVFP are not, and should not be, limited to those articles traditionally found in blind-operated vending facilities, but rather, should be able to evolve with the times and customer needs and demands. *See also* "Vending Facility" and "Vending Machine" discussions below.

In 1977, the Department promulgated final regulations which, among other things, defined terms applicable to the requirements of the R-S Act. (42 FR 15802 (Mar. 23, 1977).) In the preamble to the final regulations, the Department explained that the purpose of each definition was to facilitate the effective implementation of the R-S Act. Further, those definitions reflected the Department's belief and policy determination at the time of how to implement the statute's purpose.

While it did not define the term "articles" in the 1977 regulations, the Department determined that it was necessary to clarify the definition of "vending machine" for purposes of vending machine income distribution. The 1977 regulations, under which the RSVFP is currently operating, expressly excluded two types of machines from the definition of "vending machine": machines providing services of a recreational nature and pay telephones. While the Department acknowledged public comments in support of a broader interpretation of "articles or services" appropriate for dispensing by vending machines for vending machine income under the RSVFP, the Department's rationale at that time for excluding certain types of machines from vending machine income sharing requirements was that Congress had not intended to change the scope of "articles or services" beyond those "traditionally found in blind-operated vending facilities." (*Id.*)<sup>14</sup> This interpretation in the 1977 preamble has engendered confusion for Federal and State agencies as well as blind vendors and led some agencies and entities to adopt a limited concept of covered

<sup>14</sup>The 1977 regulations included a third exemption from the definition of a vending machine—machines operated by the U.S. Postal Service for the sale of postage stamps or other postal products and services. However, that exemption was not based on the understanding that these articles or services were not traditionally found in blind-operated vending facilities, but that these machines were "uniquely supportive of the United States Postal Service mission." (*Id.*)

"articles or services" that could be dispensed by vending facilities based on the Department's interpretation at that time of the statute's text regarding vending machine income sharing and a static understanding of blind vendor operations as of 1974.

The trend of decreasing blind vendor opportunities, the majority of which are for food services, and the evolution of RSVFP vending facilities and vending machines selling a wide variety of articles over the years has prompted the Department to take a fresh look at the statutory interpretation underpinning its 1977 regulations. The Department no longer believes that this aspect of the 1977 regulations reflect the best reading of the statute and so is currently proposing changes that would specify that blind vendors are not limited to the vending opportunities that were traditionally found on Federal and other property in 1974.

This view is informed by the Department's review of the statutory language allowing for the sale of "other articles and services" in addition to specific items listed, legislative history that reveals Congress intended this language to "include anything susceptible of being sold by blind vendors" (Sen. Rep. at 25), the evolution of the business enterprise programs (BEPs)<sup>15</sup> to include emerging industry technologies, and the Department's understanding of the state of employment opportunities for blind vendors on Federal and other property.

The Department's view of "articles" as tangible personal property is informed by the ordinary meaning of terms that make up how "articles" was understood in 1974 when Congress amended the R-S Act. The term "article" was defined as "a particular object or substance, a material thing or a class of things." *See* Black's Law Dictionary (4th ed. 1968) "Object" was "anything which comes within the cognizance or scrutiny of the senses, especially anything tangible or visible." *Id.* Finally, "tangible" was defined as "capable of being touched; also,

<sup>15</sup>A Business Enterprise Program (BEP) is authorized under section 103(b)(1) of the Rehabilitation Act at 29 U.S.C. 723(b)(1) and 34 CFR 361.49(a)(5). The statute refers to "any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies." While States can create BEPs other than the RSVFP, RSA is not aware of such other BEPs and recognizes that States typically refer to the operation of the RSVFP in their State synonymously with the operation of their BEP.

perceptible to the touch; tactile; palpable, and as being capable of being possessed or realized. *Id.* Based on the meaning of the words used in the definition of “article” and the context of how “articles” is used in the statute, the Department believes that the proposed definition of “articles” as items of tangible personal property that can be felt or touched by an individual and can be physically relocated reflects the best reading of the R–S Act.

Furthermore, the legislative history to the 1974 amendments to the R–S Act supports the breadth which Congress intended for the RSVFP with respect to the types of items to be sold: “[T]he kinds of articles which may be sold by blind vendors is expanded to include anything susceptible of being sold by blind vendors. *There is no reason, physical or otherwise, to limit the kinds of articles a blind vendor may sell.*” (emphasis added.) (Sen. Rep. 93–937, 25 (1974)). Congress wanted to protect the livelihoods, rights, and economic interests of blind vendors on Federal property. (100 Cong. Rec. 9946 (1954), Sen. Rep. 93–937 (1974)).

The Department believes the proposed regulations would better effectuate Congressional intent to support the economic interest of blind vendors by recognizing the evolution of the wide range of articles that can be sold through vending facilities and vending machines on Federal and other property. In fact, articles sold in RSVFP vending machines and vending facilities have continued to evolve beyond those traditionally sold by blind vendors in the years preceding the 1977 regulations. For example, the Department believes, based upon stakeholder feedback and the Department’s observations, that blind vendors operate, and have been operating, vending facilities and vending machines that dispense a variety of items in addition to those listed in the statute, including souvenirs, cosmetics, flowers, electronics, and personal care and health products, which may include over-the-counter, but not prescription, medications.

Therefore, through these proposed regulations, the Department is reconsidering the position taken in the preamble of the 1977 regulations that limited the articles and services blind vendors could sell to only those traditionally dispensed by blind vendors in the years preceding 1977. We no longer believe that interpretation best reflects the intent of Congress, as reflected in the text Congress enacted nor does it best effectuate the purposes of the R–S Act or reflect the actual

vending of articles done by many licensed blind vendors under the RSVFP.

Given the evolution of RSVFP vending facilities and vending machines over the years, the Department has determined it necessary to amend the RSVFP regulations to codify the Department’s interpretation regarding the wide array of what vendors can sell under the statute<sup>16</sup> and to address the questions raised by SLAs, blind vendors, and other stakeholders. Through this proposed definition, the Department would update the regulation to reflect the breadth of articles currently sold under the RSVFP by blind vendors through vending machines and vending facilities and clarify the scope of articles that could be sold by blind vendors under the RSVFP as the industry continues to evolve.

The Department intends to clarify that it interprets “articles” broadly. However, this proposed definition should not be construed to require any specific item be sold on Federal property or, equally important, require only certain articles be sold on Federal property. The permit process<sup>17</sup> to operate a vending facility other than a cafeteria and the contracting process for a cafeteria would not change and would still include the negotiation process between the Federal agency and the SLA to determine what types of articles will be sold on Federal property or between the State Department of Transportation and the SLA for purposes of highway rest areas. Rather, the proposed definition would clarify that vending facilities that sell a wide variety of “articles” would be subject to the same permit and contracting processes. This proposed definition would enable the RSVFP to evolve over time and, thus, continue to provide economic opportunities to blind vendors so they may be self-supporting both now and in the future.

Therefore, the Department proposes to define “articles” as items of tangible personal property that can be felt or touched by an individual and can be physically relocated. This proposed definition reflects the best reading of the statute that Congress intended vending machines to dispense only articles of tangible personal property, as discussed later in this document where we discuss the proposed definition of the term

<sup>16</sup> See RSA–TAC–24–03 “Use of VR program funds for initial stocks and supplies and initial operating expenses for blind vendors under the Randolph-Sheppard vending facilities program” and TAC–24–06 “Allowable Costs for Vending Facilities and Equipment for Vendors under the Randolph-Sheppard Vending Facility Program.”

<sup>17</sup> 34 CFR 395.16.

“vending machine.” The Department’s proposed definition is consistent with commonly-used definitions of “articles,” specifically that they are goods,<sup>18</sup> objects and items for sale.<sup>19</sup> In analyzing the commonly-used definitions of “articles,” the Department considered the individual terms used within those definitions, particularly “goods,” which is defined, in pertinent part, as an item of tangible personal property having value but usually excluding money, securities, and negotiable instruments.<sup>20</sup>

To illustrate the breadth that the Department intends from the proposed definition, the Department also believes “articles” could include items such as flowers, personal care products (*e.g.*, deodorants, toothpaste, hairbrushes and combs, and cosmetics), and electronics. As with the items named in the statute, these, too, can be felt, touched, and physically relocated, thereby constituting tangible personal property. The Department understands that many blind vendors are already dispensing these articles at their vending facilities or in their vending machines, but also that SLAs and blind vendors nationwide have not consistently interpreted “articles” this broadly.

Therefore, the Department has determined these proposed regulations, and particularly this proposed definition, are necessary to ensure consistency with respect to the implementation of the RSVFP nationwide. See “Vending Machine” below for a more in-depth discussion of the scope of articles that could be dispensed by a vending machine under the RSVFP.

#### Vending Facility

*Statute:* The definition of “vending facility” in 20 U.S.C. 107e(7) means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment necessary for the sale of the articles and services described in 20 U.S.C. 107a(a)(5) and which may be operated by blind licensees. Section 107a(a)(5) provides that RSA designate the State agency that

<sup>18</sup> Merriam-Webster definition 4—a member of a class of things especially: an item of goods. <https://www.merriam-webster.com/dictionary/article>.

<sup>19</sup> *Dictionary.com* definition 2—an individual object, member, or portion of a class; an item or particular: an article of food; articles of clothing. Definition 4—an item for sale; commodity. <https://www.dictionary.com/browse/article>.

<sup>20</sup> *Goods*, Merriam-Webster Dictionary, entry-2—“personal property having intrinsic value but usually excluding money, securities, and negotiable instruments.” “something manufactured or produced for sale.” <https://www.merriam-webster.com/dictionary/good#dictionary>.

provides services to the blind to issue licenses to blind persons to operate vending facilities on Federal and other property in its State. The statute states that the vending facilities may sell newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all the health laws, as determined by the State licensing agency. The 1974 amendments also added to the list of articles specifically identified the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

*Current Regulations:* 34 CFR 395.1(x) defines “vending facility” to mean automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws. It also added that vending facility includes the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

*Proposed Regulations:* The Department proposes to amend the definition of “vending facility” in section 395.1(x) in two substantive ways by—(1) reinforcing other regulatory requirements that vending facilities are operated by blind licensees pursuant to a permit or contract, and (2) adding illustrative examples of vending facilities to further interpret the terms “snack bars,” “cart services,” “shelters,” and “counters” used in the statutory definition of “vending facility” as including micro markets, laundry and catering establishments, gift shops, retail stores, and temporary or mobile establishments such as pop-up stands and food trucks.

The Department also proposes to make several non-substantive wording and organizational revisions that do not change the meaning of the definition but are intended to add clarity and minimize confusion. Specifically, the Department proposes to—(1) add the word “their” before “auxiliary equipment,” to clarify that appropriate auxiliary equipment alone is not a “vending facility” but rather a component of a “vending facility;” (2) move mention of the lottery to be near the other articles sold; (3) remove the phrase “and including the vending or

exchange of changes” when describing the authorization to sell lottery tickets; (4) restructure the definition from a single original paragraph to multiple paragraphs to improve clarity and readability; and (5) make other minor wording changes necessitated by the restructuring of the definition.

*Reasons:* Consistent with the statutory language and the legislative history, the Department proposes to amend the definition of “vending facility” in § 395.1(x) to accomplish two critical purposes—to clarify which vending opportunities on Federal and other property constitute a “vending facility” for purposes of the RSVFP; and add illustrative examples to provide clarity to ensure that the definition of “vending facility” can evolve with technology and the capabilities of blind vendors. The Department proposes other non-substantive wording and restructuring changes throughout to add clarity for Federal and State agencies administering the RSVFP and for blind vendors operating vending facilities.

To ensure consistent implementation of the priority for blind vendors on Federal property nationwide, the R–S Act (20 U.S.C. 107e(7)) includes a definition of “vending facility” through which Congress establishes a general framework for the operation of these facilities and the types of articles and services to be sold or dispensed. To clarify this statutory purpose in regulation and address numerous inquiries to which the Department has responded in a variety of settings at the Federal and State levels, the Department proposes to amend the definition of “vending facility” at 34 CFR 395.1(x) to add language clarifying the types of business opportunities on Federal or other property that constitute a “vending facility” for purposes of the RSVFP.

First, the Department proposes to add a clause stating that vending facilities may be operated by blind licensees pursuant to a contract or permit. The R–S Act requires cafeterias, which are a type of “vending facility,” to be operated pursuant to a contract.<sup>21</sup> All other vending facilities are established by permit issued by the appropriate Federal agency to the SLA in accordance with the process outlined in 34 CFR 395.16. While these requirements are already codified in separate sections of the R–S Act regulations, the Department believes adding this clause to the vending facility definition will bring added clarity to stakeholders and the public by reinforcing those requirements in the

definition of “vending facility” itself. The changes to this definition are not intended to revise any requirements of 34 CFR 395.16 and 395.33.

The second purpose of the substantive changes to the vending facility definition is to provide additional examples of vending facilities to add clarity to the vending models in the definition, thereby ensuring evolution of vending facilities with technology and the capabilities of blind vendors. This proposed change would be consistent with existing guidance addressing modern illustrative examples of statutory terms used in the definition of “vending facility.”

Specifically, the R–S Act defines “vending facility” at 20 U.S.C. 107e(7), in addition to vending machines and cafeterias, to include snack bars, cart services, shelters, and counters. Since the regulations were promulgated, new technologies and updated business models of those listed in the definition have emerged for meeting customer demand for articles and services on Federal and other property. Consequently, the Department has received questions from SLAs and other stakeholders about whether and to what extent the concept of a “vending facility” encompasses modern iterations of facilities that, like those articulated in the statute, sell or dispense articles and services of the type contemplated by the statute. Several stakeholders expressed concern that the current regulations do not clearly address the applicability of the definition of “vending facility” to modern vending operations and noted the risk of inconsistent application of the R–S priority across agencies for certain types of vending operations not expressly mentioned.

In the Department’s view, the best reading of the statutory definition of a “vending facility” encompasses modern iterations of facilities enumerated in the statute, consistent with the 1974 amendments to the R–S Act and the shift in the statute away from the term “vending stand” to “vending facility.” The text of the statute provides that automatic vending machines, cafeterias, snack bars, cart services, shelters, and counters are all vending facilities and leaves it to the Department to implement through regulation how those vending business models dispense articles and services. As explained in the legislative history, the concept of a “vending facility” was meant to reflect the capability of blind vendors to operate extensive and sophisticated businesses. (Sen. Rep. 93–937 at 25.) The Committee report accompanying the 1974 amendments stated that the term “vending facility” was intended to

<sup>21</sup> 20 U.S.C. 107d–3(e); 34 CFR 395.33.



encompass the enumerated examples “as well as the stereotypical kiosk type stand.” *Id.* The Department believes it would be contrary to the goals of the statute to construe the term “vending facility” narrowly or in a manner that limits or restricts the application of the priority afforded to blind vendors to the evolution of vending operations on Federal property.

For that reason, the Department proposes to add a non-exhaustive list of current examples of such facilities to demonstrate that the best reading of the terms “cafeterias, snack bars, cart services, shelters, and counters” captures a broad range of vending businesses. Based on interactions RSA held with SLAs during FYs 2022 and 2023, many SLAs indicated that blind vendors are already operating such modern vending facilities including, but not limited to, micro markets, laundry and catering establishments, retail stores (such as gift shops, and convenience stores), and temporary or mobile establishments such as food trucks and pop-up stands.<sup>22</sup> Guidance issued in 2024 addressed some modern iterations of the vending facilities identified in the statute, and the proposed regulations would provide additional clarity on this issue.

As an example, micro markets are unmanned retail environments where customers can engage with products on shelves and in open coolers with cash or electronic payment methods.<sup>23</sup> Blind vendors are increasingly choosing to operate micro markets as more versatile vending facilities due to the wider range of product offerings generally available than vending machines and the relatively low costs of running these types of facilities compared to other manned alternatives, like snack bars. In addition, they are established by permits as opposed to contracts for cafeterias, and, unlike cafeterias and other manned retail facilities, can be in operation 24 hours a day without staff.

As noted in section 107a(a)(5) of the R–S Act, articles and services sold include, but are not limited to, “foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises.” (20 U.S.C. 107a(a)(5).) (emphasis added.) Consistent with how the statute

permits food and beverages dispensed at the Federal agency’s location to be prepared off the premises, such as by the manufacturers of those products, blind vendors use similar business models to provide other articles and services on the Federal property that are prepared off the premises, such as laundry and catering establishments.

Laundry services involve distributing laundered articles at the agency’s location (dispensing automatically or manually) after washing and drying items at a laundry establishment offsite (prepared on or off the premises). Similarly, catering establishments prepare food and beverages (*i.e.*, the articles to be dispensed through the vending facility) off the premises, as it is permitted to do, and then delivers the food and beverages to be dispensed (*i.e.*, served) on the premises. Since the 1974 amendments, the R–S Act specifically has included articles and services prepared off the premises. Including laundry and catering establishments as illustrative examples in the proposed definition of “vending facility” gives meaning to the words “prepared on or off the premises” which appear in the statute, is consistent with guidance provided to stakeholders over the years and improves consistency.

In addition, SLAs and blind vendors are exploring the feasibility of operating food trucks as viable business opportunities due to the mobile nature of food trucks, which would allow them to meet the demand for vending facilities on large Federal properties such as military bases and national parks. The proposed inclusion of illustrative examples of modern types of vending facilities would clarify that food trucks can be vending facilities under the R–S Act.

Retail stores<sup>24</sup> include convenience stores open to the public or agency employees that may sell a wide array of articles, beyond just food and beverages. Gift shops provide articles, which include souvenirs such as tee shirts, key chains, water bottles, and other items such as cosmetics and electronics.

Including these illustrative examples in the proposed regulation of more modern versions of vending facilities already listed would clarify the permissibility of the methods for selling

or dispensing articles and services that have already evolved in some States implementing the RSVFP, thereby ensuring consistency across all State RSVFPs. These business models have become increasingly prevalent on Federal and other property. If “vending facility” were to be interpreted narrowly to include only those business models listed in the statute as they existed in 1974, these more modern ways of vending articles and services could not be considered vending facilities to which the R–S Act priority may be afforded. This would likely result in these business models being operated by contractors outside of the RSVFP and thus, competing directly with, or even replacing, the traditional cafeterias, vending machines, snack bars, and counters operated by blind vendors. This result would be inconsistent with the 1974 amendments, which made clear that vending facilities should encompass a broad array of facilities and that blind vendors should receive a priority in the operation of those facilities on Federal property.

To clarify, these examples of vending facilities could dispense any article, as proposed to be defined in 395.1(cc) or service. The Department believes the proposed changes represent the best interpretation of the statute, which is to advance employment opportunities for blind vendors. The Department recognizes that there may be modern examples of vending facilities other than those listed in these proposed regulations and, accordingly, invites comment as to whether the Department should incorporate other illustrative examples in the regulatory text or further clarify how the statutory examples of a “vending facility” apply to modern vending operations.

The Department of Education invites comments from the public and key stakeholders who ensure quality-of-life programs and provide support for the military community. The proposed definitions of “articles” and “vending facilities,” which would apply the R–S Act priority to blind vendors for various retail businesses on Department of Defense installations, could reduce the financial support that the military resale system provides to military members and their families. The Department of Education invites comment, particularly on the potential for the proposal to impact revenue streams that support essential quality-of-life benefits for military members and their families and seeks input on alternative definitions of the terms “articles” and “vending facilities” that could better support the existence of the military resale systems and blind vendors on DoD property.

<sup>22</sup> Among the resources listed on the RSA website is a template for permits to operate vending facilities. The permit template contemplates vending facilities such as pop-up food services and food trucks. See [https://rsa.ed.gov/sites/default/files/programs/randolph-sheppard/UPDATE\\_-\\_RS\\_Permit\\_3-09-21%20\(1\).pdf](https://rsa.ed.gov/sites/default/files/programs/randolph-sheppard/UPDATE_-_RS_Permit_3-09-21%20(1).pdf), Attachment G, Paragraph J.

<sup>23</sup> National Automatic Merchandising Association, <https://namanow.org/convenience-services/micro-markets/>.

<sup>24</sup> Retail stores established under the R–S Act’s priority as vending facilities are distinct from the military commissaries and exchange stores (together, the exchange system) currently operating under the authority of Title 10 of the U.S. Code, that sell at reduced prices, food and other merchandise to active duty personnel and other persons authorized to use the system. The R–S Act and Title 10 can be implemented in such a way that the military can further the purposes of both the RSVFP and the exchange systems on DOD property.

Finally, the Department proposes other non-substantive, solely technical changes intended to add clarity. Specifically, the Department proposes to add the word “their” to modify “appropriate auxiliary equipment,” to clarify that appropriate auxiliary equipment, by itself, does not constitute a “vending facility,” but rather is a component of a “vending facility.”

The Department also proposes to revise text describing a lottery in the current regulations in two ways. The Department proposes to remove the phrase “and including the vending or exchange of changes” when describing the authorization to sell lottery tickets. This change would remove a typographical error that has existed since 1977 when the regulations were promulgated. Specifically, “changes” was supposed to read “chances” as provided in the statute and removing the phrase would improve readability of the sentence. The Department intends this change to be technical, and not substantive.

The Department also proposes to move the mention of the lottery, so it is included with the other specified list of articles sold by blind vendors. This phrase is at the end of the current regulation, separate from the rest of the specified list of articles, thereby creating a potential for confusion as to the significance of its isolation from the other articles. As with the other proposed non-substantive changes, the Department intends this change to be solely technical in nature.

The Department also proposes to restructure the definition from a single paragraph to multiple paragraphs. In so doing, most of the current regulatory definition content remains intact, with only the three minor changes just described, and the new text added in new paragraphs, thereby improving clarity and readability, and reducing confusion for those administering the RSVFP.

#### *Vending Machine*

*Statute:* The statute uses the term vending machine throughout 20 U.S.C. 107, *et seq.* However, the section most pertinent is the inclusion of “vending machine” as a type of “vending facility” in 20 U.S.C. 107e(7) where vending facility includes automatic vending machines that may sell newspapers, periodicals, confections, tobacco products, foods, beverages, lottery, and other articles or services.

*Current Regulations:* 34 CFR 395.1(y) defines “vending machine” for the purpose of assigning vending machine income under the regulations in part 395. The term means a coin or currency

operated machine that dispenses articles or services. However, machines operated by the United States Postal Service for the sale of stamps and other postal products and services, recreational machines, and pay telephones are excluded.

*Proposed Regulations:* The Department proposes to amend the definition of “vending machine” in section 395.1(y) by—(1) removing “for purposes of assigning vending machine income under this part;” (2) removing “services” as that which can be dispensed by a “vending machine;” (3) replacing “coin or currency” with “cash” and adding “electronic payment methods” as allowable payment methods; (4) removing the specific exclusion for recreational machines and pay telephones; and (5) replacing the term “postal machine” with “self-serve postal center.” The Department also proposes to reorganize the definition from a single paragraph to multiple paragraphs to improve readability and clarity and make other technical, non-substantive changes.

*Reasons:* The Department published proposed RSVFP regulations in 1975 that sought to define “vending machine” because the statute does not define this term. (40 FR 59408 (Dec. 23, 1975).) The proposed regulations at that time defined “vending machine” for purposes of vending machine income to mean “an unattended coin or currency operated machine which dispenses any articles automatically or manually or which dispense services when such services are authorized under a permit to be sold by a blind licensee, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services shall not be considered to be vending machines.” (40 FR 59409.) The proposed regulations at that time did not include any explanation or rationale in support of the definition.

The preamble of the 1977 final regulations states that the purpose of the regulatory definitions, including the definition of “vending machine,” is to facilitate the effective implementation of the R–S Act through providing precise interpretations of complex concepts. (42 FR 15802.) The Department’s proposed definition of “vending machine” would govern the types of machines subject to the priority afforded to blind vendors on Federal property<sup>25</sup> and any applicable

<sup>25</sup> In addition to the priority to operate vending machines on Federal property under the R–S Act, the Surface Transportation Act requires that in placing vending machines at highway rest areas, States give priority to vending machines operated under the RSVFP (23 U.S.C. 111(c)).

vending machine income sharing provisions.

The Department proposes to revise the definition of “vending machine” in five substantive ways and to make other technical, non-substantive changes as described separately below to reflect the realities of ever-changing technology and the employment and economic opportunities for blind vendors.

First, we propose to amend the definition of “vending machine” by removing “for purposes of assigning vending machine income under this part” because that qualifier could limit the application of the term “vending machine” throughout part 395. The Department addressed the definition of vending machine only in the context of the vending machine income provisions of part 395 to address the concerns raised to the 1975 NPRM. (42 FR 15804–15807 (Mar 23, 1977)). However, the current definition of “vending machine” created confusion as to whether the definition applies throughout part 395 or is limited only to the vending machine income provisions. Therefore, the Department believes there is a need for a general definition to provide clarity and ensure consistency in the application of all provisions under the R–S Act. In deleting this phrase, the Department would make clear that the definition of “vending machine” would apply throughout part 395.

Second, the Department proposes to remove “services” from the definition of “vending machine.” Removing “services” from the definition of “vending machine” reflects the Department’s current view that Congress intended the term “vending machine,” as used in the definitions of “vending facility” and “vending machine income” in the R–S Act to be equipment that dispenses only articles of a tangible nature. While the statutory definition of “vending facility” is broad, it uses the disjunctive in describing “other articles or services” related to what can be vended under the RSVFP to make it clear that a vending facility need not sell both articles and services to qualify as such. 20 U.S.C. 107(a)(5). The R–S Act defines a “vending facility” to include a variety of business models, including the “vending machine” business model, but only imposes income sharing requirements under the RSVFP on the income earned through vending machines. See generally, 20 U.S.C. 107d–3.

Congress made clear that while vending machines could operate separately as a vending facility, there were unique aspects to vending machines and the history of their use in Federal agencies that make them

distinct from the other business models described in the statute.

The Department's current view is also consistent with the statutory definition of vending machine income at 20 U.S.C. 107e(8) as "receipts from vending machine operations on Federal property, after cost of goods sold." As noted in our above discussion of "articles," the proposed definition is based on commonly used definitions of "articles," that describe "articles" as goods,<sup>26</sup> objects and items for sale.<sup>27</sup> "Goods" is commonly defined as an item of tangible personal property having value but usually excluding money, securities, and negotiable instruments.<sup>28</sup> Further, nothing in the statutory definition of vending machine income refers to earnings from the sale of services. For purposes related to an entity's income, "cost of services sold" is typically a distinct concept from "costs of goods sold."<sup>29</sup> Where Congress has intended for provisions to encompass service-related sales, it has used the term "costs of services sold."<sup>30</sup> The Department has similarly used the term "costs of services" in its regulations concerning income under the State VR program.<sup>31</sup> Therefore, when Congress used the phrase "cost of goods" in the definition of vending machine income, it is reasonable to conclude that it referred to the cost of the articles sold in vending machines.<sup>32</sup>

When the Department first defined "vending machine for purposes of vending machine income" in 1977, it included the reference to "articles or

services," used in the definition of "vending facility" when applying it to the definition of "vending machine," without any discussion in the preamble, or without examples of RSVFP vending machines that dispense services. While there was a lengthy discussion in the preamble to the final regulations regarding the large number of comments received about vending machine income, the only mention of machines that dispense services occurs with the exclusion from the definition of a vending machine, specifically "pinball machines, telephones, perfume spray machines, and jukeboxes." 42 FR 15802, 15806.

Finally, the Department does not believe this proposed change would significantly disadvantage blind vendors in the RSVFP, because the Department is not aware, based upon stakeholder feedback and the Department's observations, of any vending machines, past or present, operated under the RSVFP, that dispense services. Moreover, should a blind vendor choose to dispense a service via a machine, the vendor could still do so within a vending facility.

We invite public comment on the proposed removal of "services" from the vending machine definition, including the potential impact of this proposed change on the RSVFP.

Third, the Department proposes to revise the listed payment methods in the current definition from "coin or currency" to "cash and electronic payment methods" to provide clarity and reflect more current methods of payment. The Department proposes to replace "coin or currency" with the term "cash," to incorporate both coin and currency as payment methods and streamline the regulatory text. The proposed revision also would include electronic payment methods, which are a common payment method in the 21st century.<sup>33</sup> The term "electronic payment methods" would be intended to encompass a range of non-cash transactions, including credit card, debit card, and mobile payments. Examples of mobile payment methods include mobile wallets, applications on electronic devices, such as cell phones or tablet computers for the transfer of funds, and mobile or wireless credit card readers. The value of these contactless payment transactions is expected to reach \$10 trillion globally by 2027, an increase from \$4.2 trillion in 2022. It is anticipated that contactless

point of sales will be the key driver of contactless transactions over the next five years.<sup>34</sup>

The Department's proposed use of "cash or electronic payment methods" would reflect the changing customer demand and industry standards for the use of vending machines under the RSVFP. Further, the Department recognizes that there may be additional modern payment methods other than those listed in these proposed regulations and accordingly invites comments on whether we should incorporate other examples of payment methods used in connection with a "vending machine."

Fourth, we propose to remove mention of the exemption for recreational machines and pay telephones from the proposed definition of "vending machine" since, under the proposed definition, no machines that dispense services would be included, making a specific exemption for these machines unnecessary. In the 1977 regulations, the Department acknowledged that pay telephones and recreational or amusement machines were frequently found on Federal property at the time. However, the Department took the position, at that time, that such machines were outside the purview of the R-S Act, as amended, because "such machines [had] traditionally not been located in vending facilities operated by blind vendors." (42 FR at 15806-07.)

The proposed definition would remove mention of the specific exclusion of these machines because, we no longer believe "vending machines" should be defined to include machines that dispense services. To that end, recreational services provided by machines and pay telephones, which provide communications and entertainment services, would not be included in the proposed definition of "vending machine" because they would fall outside the proposed definition of "vending machine."

Fifth, while we believe it is no longer necessary to exempt recreational machines and pay telephones from the definition of "vending machine", we do propose to keep the exclusion for the U.S. Postal Service machines that dispense postage stamps or other postal products. Our last proposed substantive change to the definition of "vending machine," would update the language related to this exemption by removing the word "machine" and replacing it

<sup>26</sup> Merriam-Webster definition 4—a member of a class of things especially: an item of goods. <https://www.merriam-webster.com/dictionary/article>.

<sup>27</sup> *Dictionary.com* definition 2—an individual object, member, or portion of a class; an item or particular: an article of food; articles of clothing. Definition 4—an item for sale; commodity. <https://www.dictionary.com/browse/article>.

<sup>28</sup> *Goods*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/good#dictionary-entry-2> "personal property having intrinsic value but usually excluding money, securities, and negotiable instruments," "something manufactured or produced for sale."

<sup>29</sup> See, e.g., Bentancourt, Roger R. Chapter 4: *Distribution services, Technological Change and the Evolution of Retailing and Distribution in the Twenty-First Century*, Handbook on the Economics of Retailing and Distribution, <https://www.econ.umd.edu/sites/www.econ.umd.edu/files/pubs/04%20-%20Chapter%204%20-%20Betancourt.pdf>. (Indicates when services are sold the term "cost of services sold" should be used in place of "costs of goods sold.")

<sup>30</sup> See, e.g., Public Law 108-136 (using the term "costs of services sold" when referring to an intranet contract).

<sup>31</sup> See 34 CFR 361.63(b). OMB and Health and Human Services' regulations also separately define "costs of services sold" in various provisions. See 2 CFR 200.1 (definition of central service cost allocation plan); 42 CFR 414.1465 (physician-focused payment models).

<sup>32</sup> 20 U.S.C. 107e(8).

<sup>33</sup> *The Evolution of the Electronic Payment System Until 2020* (TokenEx, Inc., Jan. 6, 2020). Further information can be found at the following website: <https://www.tokenex.com/blog/evolution-electronic-payment-systems-until-2020>.

<sup>34</sup> Contactless Payments Transaction Values to Surpass \$10 Trillion Globally by 2027 (Juniper Research, 2022). <https://www.juniperresearch.com/press/contactless-payments-transaction-values-to-surpass/>

with “self-serve postal center.” The phrase “self-serve postal center” is defined in the postal service regulations at 39 CFR 255.7(a)(2)(iii), as “contain[ing] vending equipment for the sale of stamps and stamp items, and deposit boxes for parcels and letter mail.” The Department views this change as technical in nature, but necessary, and is not intended to change the meaning of the exemption under the definition of “vending machine,” which has existed for nearly 50 years, for a “self-serve postal center.”

The Department believes that this exemption for a “self-serve postal center” remains necessary because, as we noted in 1977, certain machines located in post offices dispense purely postal products and are uniquely supportive of the United States Postal Service mission. In 1970, Congress passed the Postal Reorganization Act, which designed the U.S. Postal Service to be self-sufficient and operate like a business using the sales of postage and postage-related products to cover its operating expenses. (39 U.S.C. 101(d).) Therefore, an exemption for the sale of postal products is still required in the definition of “vending machine” for purposes of the R–S Act, since these self-serve postal centers dispense “articles” under our proposed definition.

Finally, the Department proposes to restructure the definition from a single paragraph to multiple paragraphs. This proposed restructuring of the definition of “vending machine” necessitates that some of the current definition, along with the proposed amendments, be reorganized into multiple paragraphs with some minor technical wording changes.

The Department believes this restructuring of the definition would improve clarity and readability, reducing confusion for those administering the RSVFP at both the Federal and State levels and for blind vendors operating vending machines under the RSVFP.

#### *Location and Operation of Vending Facilities for Blind Vendors on Federal Property*

*Statute:* 20 U.S.C. 107(b) provides that in authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by an SLA.

*Current Regulations:* 34 CFR 395.30(c) requires that a priority be given to blind vendors in the operation of vending facilities in areas administered by the National Park Service (NPS) or the National Aeronautics and Space Administration (NASA). The priority in

the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98–249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568, 42 U.S.C. 2473). Finally, the regulations provide that the provisions of the R–S Act and its regulations do not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

*Proposed Regulations:* First, the Department proposes to substitute the words “on Federal property” for the words “in areas” in the phrase “in areas administered by the National Park Service or National Aeronautics and Space Administration.” Next, the Department proposes to remove the statement that “when such concessions in areas administered by the NPS or NASA provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors, priority for contracts awarded shall be given in accordance with the provisions of the Concession Policy Act or the National Aeronautics and Space Act of 1958, as amended.” The proposed regulatory text would continue to apply the priority for blind vendors in the operation of vending facilities on Federal property administered by the NPS or NASA. We also propose to remove the statement that the provisions of the R–S Act and its regulations do “not apply when all accommodations, facilities, or services in [areas administered by the NPS or NASA] are operated by a single responsible concessioner” and replace it with a statement that makes clear to the extent that these agencies seek to provide visitor services that meet the definition of “vending facility” under 34 CFR 395.1(x) and are not combined with visitor services that do not meet that definition, the priority for blind vendors applies.

*Reasons:* The Department proposes this amendment to change the term “areas” used in this section to the term “Federal property” because it is the appropriate term as defined under the Act. It is unclear why the 1977 regulations used the term “areas” in this section, rather than the statutorily defined term “Federal property.” However, the Department intends for the proposed change to “Federal property” to clarify that the priority for

the operation of vending facilities applies to the Federal property administered by NPS and NASA, just as it does for other Federal agencies. We do not intend that this change will have any substantive impact.

The Department also proposes to align the application of the priority on Federal property administered by the NPS and NASA with the proposed revisions to the definition of “vending facility” and to reflect that the Concession Policy Act and the National Aeronautics and Space Act of 1958 have been repealed and replaced by statutes that continue to include specific procedures for obtaining contractors that provide services to visitors on NPS and NASA property.<sup>35</sup> The substance of the current regulation provides that blind vendors receive a priority at those NPS and NASA locations to operate vending facilities that meet the definition of “vending facility” under 34 CFR 395.1(x). The proposed regulation would continue with the premise that the RSVFP priority to operate a vending facility as defined in these regulations would apply to the NPS and NASA property and implemented consistent with any specific statutory procedures for awarding permits and contracts. To the extent that the NPS and NASA, or any Federal agency, seeks to provide services through an establishment that does not meet the definition of “vending facility” under the R–S Act, the RSVFP priority would not apply, and the business establishment would fall outside the scope of the RSVFP.

To further the Department’s interpretation reflected throughout these proposed regulations that blind vendors are not limited to dispensing only articles and services traditionally sold by blind vendors, the Department is proposing to remove this limiting language from the current regulation addressing NPS and NASA property. As stated throughout this preamble, particularly in connection with the definitions of “vending facility,” “vending machine,” and “articles,” the Department no longer believes the best interpretation of the statute limits blind vendors to selling articles and services traditionally sold by blind vendors. There is no such limitation in the language of the statute, and the

<sup>35</sup> National Park Service Concessions Management Improvement Act of 1998, 54 U.S.C. 1001, *et seq.*, provides that special contracting procedures are needed to preserve and conserve park resources. National Aeronautics and Space Administration, 51 U.S.C. 30304, requires the agency to annually set goals of providing at least 8 percent of the total value of prime and subcontracts to minority and disadvantaged small businesses.

legislative history indicates that Congress intended a broader scope of what blind vendors could dispense; therefore, the Department believes the best reading of the statute does not limit blind vendors to selling only articles and services that had traditionally been sold under the RSVFP.

Finally, we recognize that the NPS and NASA are uniquely situated in providing a variety of visitor services to customers visiting the Federal property administered by those agencies, unlike most Federal agencies. The proposed regulation would retain the concept that if the NPS or NASA combine into one contract visitor services that do not meet the RSVFP definition of vending facility with those that do meet the definition, the provisions of the R-S Act and its regulations do not apply. However, the Department proposes to clarify that to the extent that these agencies seek to provide visitor services through an establishment that meets the definition of “vending facility” under 34 CFR 395.1(x) and are not combined with visitor services that do not fall within a covered vending facility, the RSVFP priority for blind vendors applies.

#### Severability

*Statute:* None.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 395.50 would provide that, if any provision of part 395 or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

*Reasons:* The Department believes that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to blind vendors, State agencies that administer the RSVFP, the RSVFP generally, and the Federal and State governments separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department’s intent that the potential invalidity of one provision should not affect the remainder of the provisions.

*Executive Orders 12866, 13563, and 14094*

#### Regulatory Impact Analysis

Under Executive Order 12866, OMB must determine whether this regulatory

action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further, the President’s priorities, or the principles stated in the Executive order as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed the proposed regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations only on a reasoned determination that their benefits justify any costs associated with them. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563. We also have determined that this regulatory action does not unduly interfere with State, local, territorial, or Tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866, 13563, and 14094, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action. The potential costs associated with this proposed regulatory action are those allowed by statutory requirements and those we have determined as necessary for administering the Department’s programs and activities. This regulatory impact analysis discusses the need for regulatory action, the potential costs and benefits, assumptions, limitations, and data sources, as well as regulatory alternatives considered.

Because the proposed regulations would only require States to make changes to the definitions in their State rules and procedures for the RSVFP to align those definitions with the changes in the Federal definitions, there is uncertainty as to how such changes would impact further revisions in State policies and procedures and to what extent, if the proposed regulations were finalized. Therefore, the Department is unable to determine whether this proposed regulatory action would have an annual effect on the economy of more than \$200 million, but we anticipate the impact will be less than

that in the initial implementing years. We invite the public to comment on the economic impact of the proposed changes.

## Background

### 1. Need for Regulatory Action

Since the RSVFP regulations were promulgated in 1977, the business practices and technology associated with vending facilities and vending machines have advanced greatly. As discussed in the Background section, the number of blind vendors and the number of facilities operated by blind vendors, as well as gross sales for the program and gross income for blind vendors, have decreased substantially since 2013. For the RSVFP to remain a viable employment opportunity for blind individuals, the Department believes the definitions of “vending facility” and “vending machine” must be amended to ensure consistency within the RSVFP and continued advancement of economic opportunities for blind vendors. These proposed regulations would reflect evolving trends in business practices and vending technology, consistent with the R–S Act’s purpose of providing viable employment opportunities for blind individuals.

To meet these needs, the Department proposes to amend the definitions of “vending facility” and “vending machine” in various ways and add a definition of “articles” to improve clarity and consistency for the implementation of the RSVFP. These proposed regulations would clarify and improve the current regulations, ensuring they reflect evolving business practices, vending technology, and commercial payment methods. More specifically, the proposed regulations would define “articles,” for purposes of the items to be dispensed by a “vending facility” and “vending machine,” and would clarify that services may only be dispensed at a vending facility that is not a vending machine. The proposed definition of “vending facility” also would make clear that updated methods of operating a vending facility would constitute “vending facilities.” Furthermore, the Department proposes to align the application of the priority for blind vendors on Federal property administered by NPS and NASA with the proposed definition of “vending facility.” Finally, the Department proposes to add a regulation regarding the severability of the provisions in part 395, which is not substantive and would not impact the analysis of costs or benefits of these proposed regulations.

Although some of the changes proposed in this NPRM are already permissible, the Department has learned through inquiries from SLAs and licensed blind vendor constituent groups that there is inconsistency among SLAs with the implementation of available flexibilities to modernize and evolve the RSVFP, thereby making these proposed regulatory changes necessary.

### 2. RSVFP Funding Sources

When Congress enacted the R–S Act in 1936, and subsequently amended it in 1954 and 1974, it did not appropriate Federal funds for the RSVFP. It also has not done so through annual Appropriations laws, as it could have done.<sup>36</sup> Therefore, there is no Federal funding specifically appropriated for the administration and operation of the RSVFP, which is administered by the SLA in 51 States.

The RSVFP operates based on multiple funding sources. The three primary sources are: VR program funds,<sup>37</sup> State appropriations, and RSVFP set-aside funds. The amount of each type of funds available in any given State varies and depends on a wide range of factors unique to each State. Each of these funding sources are discussed separately below.

*VR Program Funds:* The VR program is the largest source of funding for the RSVFP. This has been true since 1954 when the Vocational Rehabilitation Amendments (which also amended the R–S Act) amended the Smith-Fess Act to permit the VR program to engage in certain activities for the benefit of the RSVFP, such as the acquisition of vending facilities and equipment and the purchase of initial stocks and supplies. Prior to that time, States could not use VR program funds to pay for costs associated with the RSVFP. The acquisition of vending facilities and other equipment for the benefit of the RSVFP remained an authorized service to groups under the VR program when the Rehabilitation Act of 1973 (Rehabilitation Act) superseded the Smith-Fess Act, and this service remains permissible today.

<sup>36</sup> Congress appropriated \$20 million to the RSVFP Federal Relief and Restoration Program (FRRP) through the Consolidated Appropriations Act of 2021, Public Law 116–260, Division H, title III, section 318. These one-time financial relief and restoration grants to SLAs were to be used: (1) to offset losses incurred by blind vendors in calendar year 2020, so long as those losses were not otherwise compensated; and (2) to the extent funds remained available, for any of the set-aside purposes authorized under 34 CFR 395.9.

<sup>37</sup> In this NPRM, “VR program funds” refers to both Federal VR grant funds and non-Federal funds used for matching purposes under the VR program, unless specified otherwise.

To be clear, the VR program is separate and distinct from the RSVFP; however, section 103(b)(1) of the Rehabilitation Act continues to authorize States to use VR program funds to pay for certain RSVFP costs. Because it is an allowable VR activity, State VR agencies<sup>38</sup> may pay for cost of acquiring vending facilities and other equipment for the benefit of the RSVFP with either Federal VR grant funds or non-Federal funds, whereas previously SLAs relied on State funds, RSVFP set-aside funds, and any other source of available funds to pay necessary RSVFP expenditures.

The VR program operates on a mixture of Federal grant funds and non-Federal funds used to match those Federal grant funds. Specifically, section 110(a) of the Rehabilitation Act establishes a statutory formula that determines the Federal grant amount that each State receives; section 111(a)(1) makes clear that this Federal grant pays only the Federal share of the total costs of the VR program. Section 101(a)(3) of the Rehabilitation Act requires States to assure they will provide a non-Federal share of the total VR program costs, and section 7(14) of the Rehabilitation Act defines “Federal share” as 78.7 percent of the total costs, making the required non-Federal share 21.3 percent of the total costs. This means that the State can draw down \$78.70 in available<sup>39</sup> Federal VR grant funds for every \$21.30 in non-Federal expenditures it incurs (*i.e.*, almost a \$4 to \$1 return of investment to the State

<sup>38</sup> Pursuant to section 101(a)(2) of the Rehabilitation Act, each State must designate an agency responsible for providing VR services to eligible individuals with disabilities in the State. When a State only has one VR agency that serves all individuals with disabilities, including those who are blind, this VR agency is also designated as the SLA. However, when a State has two VR agencies (one that serves individuals who are blind and visually impaired and another that serves all other disability groups), the SLA and the VR agency that serves individuals who are blind are the same State agency. However, as noted in footnote 1, the SLA and VR agency are responsible for administering their respective programs separately and distinctly. Because the VR agency director is solely responsible for the expenditure of VR program funds, including the expenditure of those funds for the benefit of the RSVFP, pursuant to 34 CFR 361.13(c), we intentionally refer to the VR agency in this context rather than the SLA.

<sup>39</sup> Pursuant to section 110(a) of the Rehabilitation Act, each State receives a VR grant award based on a statutory formula. The State may access those Federal VR grant funds to the extent it can provide the requisite match of 21.3 percent. At the end of each fiscal year, States may request additional VR grant funds, to the extent they will not be used by other States and have been relinquished by them (section 110(b) of the Rehabilitation Act) and to the extent they can provide the requisite match of 21.3 percent. Once a State has fully matched all grant funds available to it, non-Federal expenditures no longer count toward the State’s match.

for its non-Federal funds spent), even for those costs incurred under the VR program for the benefit of the RSVFP.

Under the VR program, States may use a variety of sources for satisfying the non-Federal share requirement. However, the two primary sources in the context of the RSVFP are State appropriations and RSVFP set-aside funds. State VR agencies can use other non-Federal funds that may be available for these expenditures, and these amounts vary from State to State and from year to year.

*State Appropriations:* With respect to State appropriations, the availability of funds dedicated to the RSVFP varies from State to State. Some States appropriate funds to the RSVFP, while others do not. However, State appropriations generally comprise the largest source of non-Federal funding for the VR program at the State level. As described above, States may use non-Federal funds under the VR program to pay allowable RSVFP costs; this means they may use State appropriations dedicated to the RSVFP or that are assigned to the VR program since these

costs are allowable under both programs.

*RSVFP Set-Aside Funds:* RSVFP set-aside funds are the third primary source of funding available for certain costs associated with the administration and operation of the RSVFP. Pursuant to 34 CFR 395.1(s), “set-aside funds” are funds that accrue to an SLA from an assessment against the net proceeds<sup>40</sup> of each vending facility in the RSVFP and any unassigned vending machine income<sup>41</sup> from vending machines on Federal property which accrues to the SLA.<sup>42</sup> Therefore, RSVFP set-aside funds consist of contributions from RSVFP vendor profits and a percentage of unassigned Federal vending machine income that is provided to the SLA.

The R–S Act authorizes the SLA to use RSVFP set-aside funds only for certain purposes; maintenance of equipment, replacement of equipment, and the purchase of new equipment are the three most relevant for purposes of this NPRM. The SLA is responsible for the administration and expenditure of these funds. When the SLA pays RSVFP costs that are also allowable under the

VR program with set-aside funds, the State may count those expenditures towards its non-Federal share requirement under the VR program. By incurring these allowable RSVFP costs with RSVFP set-aside funds, the State can access more of its Federal VR grant funds that remain available to it.

Following is a table that describes the amount of RSVFP expenditures incurred during a three-year period (FY 2021 through FY 2023) and the source of funds used to pay those expenditures. It is important to note that the RSA–15, which is the annual data collection instrument by SLAs of income and expenditures for the RSVFP, collects data about expenditures paid with RSVFP set-aside funds and unassigned Federal vending machine income separately. To be clear, unassigned Federal vending machine income is included in the definition of “set-aside funds” at 34 CFR 395.1(s), but the RSA–15 collects the amount of expenditures paid with vendor assessments (which would be the “set-aside” amount) and unassigned Federal vending machine income separately.

FY 2021–2023 RANDOLPH-SHEPPARD EXPENDITURES BY SOURCE OF FUNDING

	FY 2021	FY 2022	FY 2023
Federal Vending Machine Income .....	\$3,103,501	\$3,077,666	\$3,616,697
Non-Federal Vending Machine Income .....	10,589,070	10,662,860	10,480,002
RSVFP Set-Aside .....	9,943,153	8,783,719	10,446,738
State Appropriated Funds .....	8,002,944	9,929,055	9,353,040
VR Federal Funds .....	38,392,506	40,713,782	45,604,065
Other Sources of Funding .....	364,236	210,264	584,218
<b>Total Funds Expended .....</b>	<b>70,384,755</b>	<b>73,377,346</b>	<b>80,084,760</b>

3. Fiscal Impact of RSVFP Expenditures on the VR Program

According to data submitted by SLAs to RSA annually through the RSA–15 report, VR program funds represent the dominant source of funding used for

most expenditures incurred for the benefit of the RSVFP with respect to vending facilities and other equipment and vending machines. RSVFP set-aside funds represent other critical sources of funding for these expenditures, albeit much smaller sources than those

expenditures incurred under the VR program for the benefit of the RSVFP.<sup>43</sup> When States pay RSVFP-related costs with non-Federal funds, it can have a direct impact on the VR program as described herein.

<sup>40</sup> 34 CFR 395.1(s). For purposes of RSVFP set-aside funds, “assessments against the net proceeds” of each RSVFP vending facility vary from State to State and are generally based on a percentage of each vending facility’s net income (*i.e.*, income minus costs, in other words, the profit). This percentage must be approved by the Secretary of Education as reasonable (34 CFR 395.9(a)) and is generally contained in the State’s RSVFP rules, which are developed in active participation with the State’s Elected Committee of Blind Vendors and approved by the Secretary of Education. 34 CFR 395.4 and 395.14. Once the percentage is approved by the Secretary, each licensed blind vendor assigned to a RSVFP vending facility must contribute that percentage of their net income to the RSVFP set-aside funds. This contribution constitutes the “assessment” mentioned in the definition of “set-aside funds.” States are not required to have set-aside funds; therefore, there are States that do not assess a set-aside fee.

<sup>41</sup> For purposes of the RSVFP, unassigned vending machine income refers to the percentage of the net proceeds (*i.e.*, profits) paid to the SLA by the Federal agency on whose property the vending machine is located when there is no licensed blind vendor assigned to operate that vending machine. See 34 CFR 395.1(z). Authorized uses of unassigned Federal vending machine income by the SLA can be found at 34 CFR 395.8(c), and the income sharing requirements are found at 34 CFR 395.32. Vending machine income is assigned to a blind vendor if it accrues from a vending machine not operated by a blind vendor that is in direct competition with a vending facility operated by a blind vendor on the same Federal property pursuant to 34 CFR 395.32(b). Under 34 CFR 395.33(c), 50% of the income received by the Federal agency from vending machines on Federal property that are not in direct competition with a vending facility operated by a blind vendor must be paid to the SLA. Under 34 CFR 395.33(d), 30

percent of the income received by the Federal agency from vending machines on Federal property that are not in direct competition with a vending facility operated by a blind vendor, and which are on Federal property at which at least 50 percent of the total hour worked on the premises occurs during a period other than normal working hours must be paid to the SLA.

<sup>42</sup> In addition to unassigned Federal vending machine income, there can be vending machine income accruing to the SLA from non-Federal property. However, the vending machine income regulations in 34 CFR part 395 only govern income from vending machines on Federal property and its disposition.

<sup>43</sup> For example, in FY 2023, SLAs reported that \$16,717,487 in Federal VR funding, \$1,198,602 in State funding, and \$3,748,522 in RSVFP set-aside funds were used for the purchase, maintenance and replacement of equipment for the benefit of the RSVFP.

As noted in the “VR Program” section of “RSVFP Funding Sources” above, pursuant to sections 110(a) and 111(a)(1) of the Rehabilitation Act, each State receives a Federal grant, based on a formula, to administer the VR program and pay the Federal share (*i.e.*, 78.7 percent) of costs of that program. RSA awards the VR grant to each State for a one-year period; however, a State may carry over unspent Federal funds for use into a second year, pursuant to section 19 of the Rehabilitation Act, if the State provided sufficient non-Federal match (*i.e.*, 21.3 percent) by September 30 of the year of appropriation (*i.e.*, the year in which the grant was awarded). If a State is unable to spend all of its funds by the end of the year of appropriation or provide sufficient match to carry the funds over into a second year by the end of the year of appropriation, a State may relinquish its unspent VR funds to RSA in accordance with section 110(b) of the Rehabilitation Act; RSA, in turn, awards these funds to other States that can use them and provide the requisite match prior to the end of the year of appropriation.

Despite statutory provisions that allow for the carryover of funds for use in a second year and the ability to relinquish Federal VR funds so they may be reallocated to other States that can use those funds, there has been an increasing trend in recent years in the amount of Federal VR funds remaining available after reallocation. The VR funds that remain available after the VR program reallocation process, because States did not request to receive all funds that were available during that process, are unavailable for VR program use after the expiration of the year of appropriation for which the funds were awarded and have been repurposed by Congress for new discretionary grant programs assisting individuals with disabilities under the Disability Innovation Fund (DIF).<sup>44</sup> Similarly, the VR program funds that lapsed after the carryover year because they were retained by the VR agencies but not spent by the end of that year were unavailable for VR program use after the end of the carryover year and were returned to Treasury. According to RSA’s fiscal data at the end of the award period, in FYs 2021 and 2022 VR State

agencies lapsed<sup>45</sup> a total of approximately \$139.6 million and \$90.8 million, respectively, of Federal VR grant funds awarded to States.

RSA has learned over the years as part of its monitoring efforts that there is no single reason for the unspent VR funds. For example, some States are not able to match their full VR grant award and, thus, relinquish the unmatched funds to RSA during the reallocation process. Other States match and reserve the full 15 percent minimum required for the provision of pre-employment transition services to students with disabilities, but for a variety of reasons, are not able to expend the full amount reserved by the end of the carryover period; these funds, however, cannot be spent for any other VR program purpose and so they remain unspent and lapse. Still other States can match their full grant awards, but do not expend their full Federal award because they either do not have sufficient State personnel or community providers necessary to use the funds to serve VR program participants.

Therefore, to the extent that States can provide additional match beyond the requisite match to access funds available through the reallocation process, and to the extent that States are not currently able to expend all of their fully matched funds, it appears there would be sufficient funds remaining available for States to access to cover at least some of the costs that could be generated by these proposed regulations without negatively impacting direct services to individuals with disabilities served under the VR program.

However, the same is not likely to be true for those States that cannot match their full VR grant. Even though excess VR funds remain available, these States are not able to access those additional funds because they cannot provide the requisite non-Federal share of 21.3 percent. Similarly, States reserving funds as required by section 110(d)(1) of the Rehabilitation Act for the provision of pre-employment transition services would not be able to use those funds for costs associated with RSVFP vending facilities and vending machines under

these proposed regulations because those funds must be reserved solely for the provision of pre-employment transition services.

While those funds appear to be available for expenditure, they are not available for an unfettered use. To the extent States in either of these categories (*i.e.*, those unable to fully match their VR grant or those with reserved, but unspent, funds for the provision of pre-employment transition services) would choose to acquire vending equipment, for example, in connection with these proposed regulations, it is likely there would be less funds available in those States for the delivery of direct services under the VR program to individuals with disabilities to assist them in achieving employment outcomes.

Finally, as explained further in the “RSVFP Funding Sources” section above, it is likely that the proposed regulations would result in SLAs receiving additional opportunities for blind vendors to operate vending facilities resulting in an increase in assessments on earnings from blind vendors set aside by the SLA and potentially an increase in unassigned Federal vending machine income if blind vendors are not available to operate all opportunities for vending machines on Federal property. See “RSVFP Set-Aside Funds” in the “RSVFP Funding Sources” section above for a more detailed discussion of RSVFP set aside funds and their requirements.

The SLAs could use these increased set-aside funds to purchase new equipment or maintain or replace equipment for the benefit of the RSVFP, and these expenditures could count towards the State’s non-Federal share under the VR program. It is possible States receiving the increased set-aside funds under the RSVFP may be able to access more Federal VR funds (*i.e.*, more of their own VR grant funds and, to the extent funds are available, more funds during reallocation), which would benefit both the RSVFP and individuals with disabilities. The interplay between the VR program and the RSVFP will be analyzed more fully below with respect to the benefits and costs of these proposed regulations.

Furthermore, we believe that the proposed regulations would benefit blind vendors who would have more opportunities to operate evolving vending facilities and provide more choices for customers who use the vending facilities.

#### Discussion of Costs and Benefits

*Overview:* After conducting a costs and benefits analysis of these proposed

<sup>44</sup> In recent years, Congress has provided the Department with authority, through appropriations language, to repurpose any available Federal VR program funds remaining after the VR reallocation process is complete. Recently, those funds were repurposed, for example, to provide new discretionary grant programs assisting individuals with disabilities obtain competitive integrated employment (CIE).

<sup>45</sup> The VR funds that lapsed and are described herein are in addition to the funds that Congress repurposed for the DIF. Most of the lapsed funds were VR grant funds that were matched and carried over into the succeeding fiscal year, as permitted by section 19 of the Rehabilitation Act, but not spent for a variety of reasons. At least some of these lapsed funds represent a portion of the minimum 15 percent in VR grant funds reserved by VR agencies for the provision of pre-employment transition services to students with disabilities, as required by section 110(d)(1) of the Rehabilitation Act, but never spent. When funds lapse, neither RSA nor the States can obligate or draw down the funds. The total amount of lapsed funds is an estimate until final closeout of awards.



regulations, the Department believes additional net costs are likely for the acquisition of vending facilities and equipment for some SLAs and State VR agencies, as they replace outdated equipment and identify additional or more modern vending facility opportunities for blind vendors to the extent they are not already doing so under current Department guidance. We also expect that the proposed regulations could result in VR agencies incurring additional costs to convert existing vending facilities from one type of business model to another and purchase initial stocks and supplies for those new vending facilities to allow them to evolve with the vendors' needs to remain competitive and self-supporting, as is the purpose of the RSVFP. Although current Department guidance permits these costs, the Department recognizes there is inconsistency among States, with some working with blind vendors to modernize and evolve the RSVFP, while others remain locked in more traditional RSVFP business models.<sup>46</sup>

Despite some anticipated increased expenditures to be incurred by States, particularly those incurred under the VR program, these same expenditures, if paid with non-Federal funds, could increase the amount of Federal VR funds States may draw down, to the extent Federal funds are available. When States use non-Federal funds to pay these allowable RSVFP expenditures and, thus, increase the amount of matching funds they could otherwise provide, States may receive more Federal VR funds to the extent they are available, thereby potentially incurring more costs under the VR program for purposes related to the RSVFP. See a more comprehensive discussion of the VR program as a "RSVFP Funding Source" above. Furthermore, the Department believes that the proposed regulations would benefit blind vendors and customers who use RSVFP vending facilities through increased earnings and increased product selection, respectively, to the extent the products are not already available through the vending facilities, given the inconsistency nationwide with the scope of articles sold or dispensed through RSVFP vending facilities. In so doing, licensed blind vendors would benefit by increased earnings, expanded vending opportunities, and increased

customer satisfaction. Through increased earnings to the licensed blind vendors, the State would benefit as well through increases to the RSVFP set-aside funds, to the extent the State places assessments on vendor net proceeds to accrue such funds.

The Department believes the benefits to blind vendors and their customers generated by the proposed rule's flexibilities under the RSVFP will outweigh the increased expenditures by the states and the Federal Government.

### **Non-Monetized Benefits of the Proposed Regulations**

#### *1. Definition of "Articles"*

We anticipate that the proposed definition of "articles" would provide clarification on and consistency for implementation of the provisions relating to vending facilities and vending machines (which are a type of vending facility) and could result in an increase in the variety of articles sold in vending facilities under the RSVFP. This could also potentially lead to increased income for blind vendors and an increase in set-aside assessments received by the SLAs.

In FY 2023, gross sales for the RSVFP were \$747,455,376. Of this, blind vendor gross income represented \$147,206,158. We estimate that up to 48 of the 51 SLAs would make changes to increase the variety of articles that may be sold in vending facilities in their States due to this proposed change. The Department uses this estimate because three SLAs are quite small, with only one to two blind vendors in the program, and these small SLAs may not have the capacity or customer demand to increase the variety of articles sold in their vending facilities. While some States already allow vending facilities to sell articles that were not traditionally sold by blind vendors, since there is nothing in the R-S Act to preclude such sales, we expect that this clarification would lead to the sale of a larger variety of articles through existing vending facilities in most States. Because the permit for a vending facility, other than a cafeteria, is negotiated between the Federal agency and SLA prior to the placement of the blind vendor, it is necessary for all SLAs and Federal agencies to have greater clarity on what is permitted to ensure consistency throughout the RSVFP.

While we do not know how much additional income for blind vendors would be generated by the sale of the increased variety of articles, we expect that this change could yield an increase in gross sales in the 48 SLAs that are likely to make at least some changes to

existing vending facilities as a result of this proposed change because, while many blind vendors are already selling the types of articles clarified as allowable in these proposed regulations, it is likely that some Federal agencies and SLAs would provide additional opportunities for blind vendor sales as a result of the clarity provided by these proposed definitions, particularly in areas where blind vendors are not selling the types of articles clarified in this proposal. Additional income for blind vendors will also result in additional set-aside funds that SLAs in States that have an assessment on blind vendor net proceeds can use for the authorized purposes under 34 CFR 395.9.

In addition, if contractors are already operating vending machines that sell articles on Federal property, under the proposed regulations, SLAs would be entitled to receive a priority for establishing vending machines operated by blind vendors, and if no blind vendor in that State is available, receive any unassigned Federal vending machine income funds from the operation of such contractor operated vending machines. See "RSVFP Set-Aside Funds" in "RSVFP Funding Sources" section of the RIA's Background above for a more detailed discussion.

We welcome public comment regarding the likely impact on gross program sales and blind vendor income due to the proposed definition of "articles" and the changes that would result from it.

#### *2. Definition of "Vending Facility"*

We anticipate that adding illustrative examples of vending facilities to provide the best interpretation of the terms "snack bars," "cart services," "shelters," and "counters" as including micro markets, laundry and catering establishments, shops that dispense articles, such as gift shops and retail stores, and other establishments, such as food trucks and pop-up stands, would provide additional clarity regarding the broad range of vending facilities encompassed by the RSVFP.

While we know that some States already allow blind vendors to operate these types of vending facilities under the RSVFP, and as such is consistent with current Department guidance, we anticipate that the inclusion of this modernized, illustrative list would clarify that blind vendors are not limited to the business models listed in the statute, as they existed in 1974, and would encourage SLAs and Federal agencies to allow for the addition of modernized types of these vending facilities as technology continues to

<sup>46</sup> While costs to convert vending facilities are allowable under the VR program for the benefit of the RSVFP and, thus, may be paid with VR program funds (both Federal and non-Federal), these costs are not allowable under the RSVFP with RSVFP set-aside funds.

evolve. For example, the Department is aware, through its work with SLAs, that many States already allow extensive use of micro markets under the RSVFP. While some SLAs have inquired about the option to allow food trucks, the extent to which State RSVFPs currently have any food trucks operating is unclear.

The Department welcomes public comment on the number of blind vendors operating micro markets, laundry or catering establishments, retail shops, pop-up stands, or food trucks, either directly or through arrangements with third parties to do so under the RSVFP, as well as information on the costs associated with operating these types of vending facilities. The Department is also interested in information about the extent to which Federal agencies are issuing permits for such types of vending facilities and the likely impact of the addition of this illustrative list to the “vending facility” definition.

### 3. Definition of “Vending Machine”

The Department intends that the proposed change to amend the definition of “vending machine” by removing the qualifier “for purposes of assigning vending machine income under this part” would clarify that the definition of “vending machine” would apply throughout part 395. The Department expects that the proposed changes to the definition of vending machine to replace “coin or currency” with “cash” and add “electronic payment methods” to the payment methods specified would clarify the methods available to accept payment through vending machines, reflect modern methods of payment aligned with industry standards, simplify the current regulatory text, and meet changing demand from vending facility customers.

For blind vendors who are not already accepting electronic payment, the addition of electronic payment as a payment option would likely result in additional sales as individuals who do not carry cash would be able to use the vending machines. To provide a reasonable estimate of the impact of this change, the Department is interested in public comment on the number of vending machines operated by blind vendors under the RSVFP and the number of such vending machines that do not already accept electronic payment.

The proposed change to remove “services” from the definition of “vending machine” would clarify that vending machines may only dispense articles of a tangible nature, leaving the

dispensing of services to other types of vending facilities and their appropriate auxiliary equipment (*i.e.*, that are not vending machines). This change would better align the regulations with the statute’s intent. RSA is not aware of any blind vendor operating vending machines that dispense services so we do not believe this proposed change would have any quantifiable benefits. However, as noted above, we invite comment on the proposed removal of “services” from within the vending machine definition and the impact of this proposed change.

The proposal to remove the specific exclusion for machines providing recreational services and pay telephones would streamline the regulations. This exclusion would no longer be necessary as the proposed change to remove “services” from the definition of vending machine would clarify that such services may not be dispensed by vending machines, as defined in the proposed regulations. We do not anticipate any quantifiable benefits to this change since it preserves the status quo.

### 4. Priority on Certain Federal Property

The proposed change to align the application of the priority for blind vendors on Federal property administered by the NPS and NASA<sup>47</sup> with the proposed definition of “vending facility”, to include the sale of a wider variety of articles, as well as the related changes, could provide additional employment opportunities for blind vendors and income for SLAs and blind vendors, but it is unclear how significant the impact would be.

As of May 17, 2024, there were 50 NPS<sup>48</sup> sites located in States with RSVFP programs that had only one concessioner. Based on the current regulations, blind vendors therefore do not receive a priority for the operation of concessions on these sites. However, under the proposed regulations, blind vendors would receive a priority if the concessions on the NPS site meet the proposed definition of “vending facility.” As a result, blind vendors could have additional employment opportunities at these sites once the existing concessioner contracts or permits expire and become available, thereby not only increasing income for licensed blind vendors personally but

also for some SLAs through any assessments on the blind vendor’s net proceeds treated as set-aside funds. However, it is not clear to what extent the concessions on NPS sites meet the proposed definition of “vending facility”; the Department invites public comment on this topic, particularly with respect to whether the income generated will help offset any costs incurred due to these proposed regulations.

In addition, it is not clear to what extent blind vendors would take advantage of these potential opportunities due to the remoteness and lack of public transportation to many of these NPS sites; the Department also welcomes public comment on this topic to help inform the cost-benefit analysis associated with this proposed change.

A significantly higher percentage of blind vendor income comes from the operation of cafeterias than other types of vending facilities. In FY 2023, 65 of the 635 vending facilities operated on Federal property were cafeterias. The gross sales from those 65 cafeterias were \$429,396,840, while the gross sales from all 635 vending facilities were only \$747,455,376, meaning that 57.44 percent of the total gross sales came from cafeterias, even though cafeterias represented only 10.2 percent of the facilities. Twenty-six<sup>49</sup> of the NPS sites that have only one concessioner include food service operations. As a result, it is possible that this proposed change could result in a significant increase in the gross sales for blind vendors were they to operate the food service operations, or other concessions meeting the proposed updated definition of a vending facility, on these NPS sites.

In addition, to the extent that existing commercial concessioners are operating vending machines on NPS sites, any income received by NPS generated by the vending machines would be considered unassigned Federal vending machine income, the sharing of which with SLAs would result in additional income transferred from NPS to the SLAs for the benefit of the RSVFP. Based on currently available information, at least four NPS sites with only one concessioner currently operate vending machines.

Further, in addition to the new employment opportunities that could become available on NPS sites with only one concessioner, there are 46 other NPS sites in States with the RSVFP that contract with more than one concessioner. Under the current

<sup>47</sup> See preamble discussion related to proposed changes to 34 CFR 395.30 based on the vending requirements that maybe unique to NPS and NASA.

<sup>48</sup> U.S. Department of the Interior (2023, April 4). National Park Service: Authorized Concessioners. National Park Service: Concessions. Retrieved May 17, 2024, from <https://www.nps.gov/subjects/concessions/authorized-concessioners.htm>.

<sup>49</sup> The NPS analysis excludes sites in Wyoming since Wyoming does not currently participate in the RSVFP.

regulations, the priority for blind vendors on NPS sites does not apply if the concessions provide accommodations, facilities, or services of a scope or of a character not generally available at that time in vending facilities operated by blind vendors. Therefore, the clarification that the articles and services that may be sold in vending facilities are not limited to those traditionally sold by blind vendors could lead to additional opportunities for blind vendors on these NPS sites.

NASA already affords the priority to blind vendors on at least some of its sites. However, the Department welcomes input on the likely impact of these proposed changes for NASA sites.

### **Non-Monetized Costs of the Proposed Regulations**

#### *1. Implementation of Proposed Definitions*

While the Department anticipates that the proposed regulations would require States to make changes to their current implementation of the RSVFP, by amending their policies and procedures to align them with these proposed changes, the proposed regulations would provide clarity on the scope of other existing opportunities, which could lead to additional vending opportunities for blind vendors.

Beyond the costs associated with updating their policies and procedures, the Department does not believe that implementation of the proposed regulations would necessitate any required costs for SLAs or blind vendors immediately. However, it is likely that blind vendors would increase the types of articles sold through vending facilities and vending machines, modernize with updates to their vending machine payment technology, and pursue new vending facility business models, which would likely lead to additional costs to the SLA and VR agency using, as applicable, RSVFP set-aside funds and VR program funds, for the costs to convert the facilities from one type of facility to another since these costs are typically borne by the VR program and not the blind vendor. To the extent the State uses non-Federal funds to pay these increased costs incurred for converting from one type of vending facility to another, the State may be able to draw down and expend additional Federal VR grant funds for the benefit of individuals with disabilities, including the RSVFP, thereby potentially further increasing costs to the State and Federal Governments. See “RSVFP Sources of Funding” in the “Background” section

of this RIA for a more comprehensive discussion of the nexus between the VR program and RSVFP, including the use of non-Federal funds for matching purposes, to benefit the RSVFP.

In addition, changes to the definition of “vending facility” could also lead to Federal agencies applying the priority more often with the introduction of more modern business models of vending. With the clarification of the broad array of articles that can be sold through vending machines, it could also be that Federal agencies will need to apply the priority for vending machines that were previously operated by non-blind vendors or share additional Federal vending machine income with the SLA that they receive from those vending machines.

Due to limited information, the Department has no reliable method for estimating how many blind vendors will pursue these changes, or the likely resultant costs, but based on the information currently available, we do not anticipate that the proposed regulations would result in significant costs. However, the Department specifically requests public comments on whether the proposed definition of “articles” and the proposed changes to the definition of “vending facility” would have a quantifiable effect on the implementation of the RSVFP on Federal agencies, and particularly on military bases. It is unclear to the Department how many RSVFP vending facilities on Department of Defense property are already dispensing articles as broadly defined in the proposed regulation or operating business models proposed as illustrative examples of those listed in the R-S Act. For that reason, we specifically request public comment on the impact that these proposed regulations may have.

#### *2. Definition of “Articles”*

While predicting how licensed blind vendors might change behavior due to the proposed revisions to the definition of “vending facility” and “vending machine” and the addition of a definition of “articles” to include tangible personal property is speculative, we anticipate that some blind vendors may choose to increase the variety of articles they sell in their vending facilities, including vending machines. We note that blind vendors would not be required to make any changes as a result of the proposed revisions to the definition of “articles” and that we do not estimate any certain costs resulting from this proposed change. These proposed revisions may initially result in additional costs to blind vendors in the form of initial

supplies to the extent that blind vendors choose to take on such cost. The Department believes that blind vendors would only assume these optional costs if there is a reasonable assurance that the resultant income would offset the costs. Therefore, to the extent that blind vendors choose to make any changes as a result of this proposed change, we assume that blind vendors would be able to recoup their initial costs when the items are eventually sold.

Similarly, these proposed revisions also could result in additional costs to SLAs and VR agencies in the purchase of new equipment or replacement (e.g., improvement) of existing equipment as blind vendors expand the variety of articles they sell. For example, this proposed revision may result in additional costs for SLAs and VR agencies as new shelving and other equipment may be needed to display the new items. To the extent the State pays these additional costs with non-Federal funds used for matching purposes under the VR program and, thus, increases the amount of Federal VR funds it may draw down and expend, this spending by the State could further increase costs for the Federal Government.

In addition, if private contractors are already operating vending machines on Federal property that sell articles that the Department is now clarifying can be sold by blind vendors through vending machines (i.e., articles that may not have traditionally been provided by blind vendors), the Federal agencies, not contractors, would have to provide up to 50 percent of the vending machine income they receive from the operation of the contractor’s vending machines to the SLA under the vending income sharing requirements. The vending machine income sharing requirements impact Federal agencies for as long as vending machines are operated by a private contractor. This requirement continues even when an SLA does not have an available blind vendor to operate the vending machines at the Federal property in question.

The Department recognizes the proposed regulation could increase the application of the priority on Federal property resulting in Federal agencies entering into permits with SLAs to allow blind vendors to operate vending facilities including vending machines once a private company’s contract expires. A consequence of SLAs seeking permits to assert the priority in the operation of vending facilities including vending machines on Federal property could be that the Federal agency would decline to enter into future contracts with private companies currently operating vending facilities including

vending machines on such property. The Department recognizes this could be a cost to private companies. However, it is unclear how many private companies this would affect.

The Department does not have data available on the number of private companies operating vending machines on Federal and other property and is therefore unable to quantify or monetize possible costs. The Department requests comment on potential costs for private companies operating vending machines on Federal and other property.

The Department welcomes public comment on the likely cost impact of these changes to blind vendors, SLAs, and Federal agencies. We are especially interested in comments regarding the impact these costs could have on the State's ability to draw down additional Federal funds under the VR program, thereby further increasing costs to the State and Federal Governments. We are particularly interested in receiving comments whether these potential costs, particularly those incurred with non-Federal funds and used for matching purposes, would be offset by the benefits received by blind vendors because of the increased vending opportunities and increased earnings and the benefits received by other individuals with disabilities because of services provided by the increased VR funds received as a result of the matching funds.

### 3. Definition of "Vending Facility"

Regarding the proposed revision to include modern illustrative examples of vending facilities, the Department believes that the proposed regulations may encourage some blind vendors to alter or expand their business model to include, for example, food trucks or micro markets. While we do not estimate any certain costs resulting from this proposed revision, if blind vendors determine that they require new equipment to pursue these options, there may be additional costs to the SLA and VR agency, including the purchase of equipment. Such equipment purchases may be paid for with Federal VR State grant funds, State funds, or R-S Act set-aside funds. Such equipment could also be rented or leased.

In FY 2023, VR agencies used \$12,446,353 of VR State grant funds to purchase new and replace (e.g., improve) equipment under the VR program for the benefit of the RSVFP. Because the proposed regulations could enable some vending facilities to convert from one type of facility to another, it is likely that the proposed regulations would result in States spending at least as much in the first

year on equipment as they reported spending in FY 2023, namely \$12,446,353. However, we believe that the proposed revisions would likely lead to States incurring additional costs under the VR State grant program in the year or years immediately following implementation of the proposed regulations as blind vendors and SLAs take advantage of the flexibilities provided by the clarifications in these proposed regulations.

While the potential increase in the use of funds from the VR State grants program could negatively impact the availability of funds for the provision of services to individuals with disabilities under an approved Individualized Plan for Employment (IPE), this is potentially unlikely in some States. As discussed earlier, many VR State agencies are failing to use all of their VR State grant funds. See "Fiscal Impact of RSVFP Expenditures on the VR program" in the Background section of this RIA for a discussion of why States fail to expend their entire grant amounts.

According to RSA's fiscal data, between FY 2020 and FY 2022, States lapsed over \$436.8 million.<sup>50</sup> Of the total 163 VR awards to States during this time, there were at least 60 instances of VR State agencies returning more than \$1.3 million each in unused VR funds. In seven cases, VR State agencies left between \$10 million and \$30.8 million each unspent under the VR program, including for the benefit of the RSVFP.<sup>51</sup> Additionally, in FY 2020, \$130.1 million of Federal VR State grant funds remained available following the reallocation of funds, in accordance with section 110(b)(2) of the Rehabilitation Act, to those States that could match them prior to the end of the year of appropriation.

Similarly, in FY 2021 and FY 2022, \$177.4 million and \$264.3 million, respectively, remained available following the reallocation of funds to States that could match the additional VR funds in each of those years. Although these funds were available to any State that could provide the requisite match under the VR program during the reallocation process, there were more funds available than requested by States during the VR reallocation process, and therefore became available under the DIF, through which Congress has authorized RSA to use the remaining VR funds for innovative activities that benefit

individuals with disabilities in a wide variety of ways distinct from the RSVFP and the VR program, and other Congressionally-directed purposes. In other words, Federal funds initially appropriated for the VR program, but that remained unused by that program, were repurposed by Congress.

When considering that these particular funds were initially appropriated for the VR program for its own use, including for the benefit of the RSVFP, it is reasonable to project that some of these same funds would likely be available to VR agencies—and not repurposed by Congress—if States could increase their ability to generate match to help pay for many of the costs resulting from these proposed regulations, as described above, such as the costs that SLAs and VR agencies would bear in purchasing new vending equipment or improving vending facilities in response to these proposed regulations. In other words, to the extent States can generate more matching funds than they had in previous years for the VR program, such as from expenditures incurred by SLAs with RSVFP set-aside funds, VR agencies may be able to access additional VR funds (i.e., more of their own VR grant funds and, to the extent funds are available, more funds during reallocation) that otherwise would have remained unspent and unused by the VR program without impacting the amount of VR funds available for services to individuals with disabilities.

For those States that could provide the requisite match but were unable to spend their VR grants, thus resulting in funds lapsing at the end of the carryover year, the Department believes these proposed changes would clarify the breadth of allowable expenditures under both the RSVFP and the VR program. In clarifying the wide breadth of allowable expenditures under these programs, the Department anticipates that some SLAs and VR agencies could increase their expenditures for the benefit of the RSVFP and thereby significantly reduce the amount of VR funds lapsing each year. Because of the large amount of VR funds that some VR agencies have lapsed in recent years, the Department believes that these VR agencies could implement policy changes consistent with these proposed regulations without negatively impacting direct services to individual VR program participants.

Due to the variety of approaches available to obtain equipment and the lack of relevant data, we cannot determine with specificity what the likely associated costs may be; the Department welcomes public comment on this topic so that we can provide a

<sup>50</sup> The total amount of lapsed funds is an estimate until final closeout of awards.

<sup>51</sup> The VR program funds described herein as lapsing are in addition to the VR funds that were repurposed by Congress for the DIF. See also footnote 49.

reasonable estimate of the likely cost impact on SLAs, VR agencies, and the VR State grant program. We are particularly interested in comments regarding whether VR agencies and SLAs believe additional matching funds will be available to cover costs that might be incurred for some of the potential improvements resulting from these proposed regulations, thereby reducing the amount of VR funds remaining unspent and unused by the VR program each year. Likewise, we are interested in how these increased non-Federal expenditures under the VR program could further increase costs to the State and any projected offsets to those costs by the benefits received by the increased opportunities to licensed blind vendors and services provided under the RSVFP and VR program. We also are interested in receiving comments from SLAs regarding whether these proposed regulations would generate increased RSVFP set-aside funds, which could be used to pay for the costs of acquiring new vending machines and appropriate auxiliary equipment, as well as the maintenance and replacement (*i.e.*, capital expenditures) of that equipment, for the benefit of the RSVFP.

#### 4. Definition of “Vending Machine”

Regarding the proposed revisions to the listed payment methods in the definition of “vending machine,” to the extent that this updated technology has not been adopted, some blind vendors may choose to install new electronic readers on their vending machines. A new electronic reader costs approximately \$300 to \$500.<sup>52</sup> Since the addition of an electronic reader to a vending machine would be an improvement to equipment as a capital expenditure, VR agencies and SLAs may pay for the improvement using VR program funds and RSVFP set-aside funds (as replacement of equipment).

The Department welcomes public comment on the number of vending machines under the RSVFP that do not have electronic payment options and the average cost to purchase an electronic reader. In addition, the Department welcomes public comment on whether vending machines that accept electronic payment in addition to cash payment result in more vending machine income, and if so, how much more than those vending machines that

only accept cash payment. We also are particularly interested in comments regarding the impact the increased revenues to blind vendors will have on the RSVFP with respect to set-aside funds and, in turn, the impact this could have on a State’s ability to generate more match under the VR program, thereby further potentially increasing costs to the State and Federal Governments.

The proposed regulations would no longer permit dispensing of services through vending machines; however, this proposed change will not likely have any impact on the RSVFP since we are unaware of blind vendors operating vending machines that dispense services and blind vendors may continue to sell services through vending facilities and use appropriate auxiliary equipment to provide those services.

Similarly, we do not expect the proposed change to remove the specific exclusion for machines providing recreational services and pay telephones to have any impact since the machines that sell such services would continue not to meet the definition of a vending machine under the proposed regulations. As a result, the Department does not estimate any cost associated with these proposed changes. To ensure that we are not overlooking any potential costs associated with these proposed changes, as noted earlier, we invite public comment on whether there is any impact of the proposed change on the RSVFP.

#### 5. Priority on Certain Federal Property

The proposed revisions to align the application of the priority for blind vendors on Federal property administered by NPS and NASA with the proposed definition of “vending facility”, as well as the related changes, are likely to result in additional costs for State agencies and NPS, and potentially NASA. To the extent that licensed blind vendors receive a priority on NPS and NASA sites, and the SLAs receive a permit to operate a vending facility, there would likely be significant start-up costs to SLAs, and to VR agencies to the extent VR funds are used to benefit the RSVFP under these circumstances, for the new vending facilities. The actual cost would vary significantly based on the number of NPS and NASA sites on which SLAs receive a permit, the type of vending facility on each site, and the number of locations. In addition to the costs associated with new equipment and start-up supplies, these proposed revisions would likely result in a significant amount of time for SLA staff to consult with the on-site official

responsible for each NPS and NASA site to determine what articles and services are suitable for sale at a particular location.

In addition, if private contractors are already operating vending facilities, including vending machines, on NPS or NASA sites, the NPS or NASA, would have to provide the priority to SLAs for blind vendors to operate such vending facilities when a contractor’s contract expires. However, there is no guarantee that an SLA would seek to obtain a permit at these sites. A consequence of more blind vendors operating vending facilities on NPS or NASA property could be that the Federal agency would decline to enter into future contracts with private companies currently operating those vending facilities. The Department recognizes this could be a cost to private companies. However, as noted previously, it is unclear how many private companies this would affect.

We note that if no blind vendor is available to operate vending machines on certain NPS or NASA properties and the Federal agency does use a private company for that operation, the agency is required to provide up to 50 percent of the vending machine income it receives to the SLA. As noted earlier, any income an SLA receives due to these proposed regulations would increase the amount of funds the SLA has at its disposal to pay for the costs of the equipment. These expenditures can be used by the State to count toward its match requirement under the VR program, thereby increasing its ability to potentially access more VR program funds (*i.e.*, more of their own VR grant funds and, to the extent funds are available, more funds during reallocation), and thus potentially increasing the costs to the State and the Federal government. The Department welcomes public comment on the cost impact to SLAs and Federal agencies of these revisions, particularly the NPS and NASA, as well as the impact they could have on the VR program.

#### 6. Technical Changes

The Department does not expect there to be any additional costs, beyond the time needed to review the revised regulations and develop revised policies and procedures, as needed, associated with the non-substantive wording and organizational revisions to 34 CFR 395.1(x), including removing the phrase “and including the vending or exchange of changes” when describing the authorization to sell lottery tickets; and removal of the qualifier “for purposes of assigning vending machine income under this part” to 34 CFR 395.1(y).

<sup>52</sup> This range was identified based on a sample of electronic readers available for purchase from online vendors. See also Cramer, Jeff. “Should I Consider a Credit Card Reader Vending Machine?” Vending How. <https://vendinghow.com/article/should-i-consider-a-credit-card-reader-vending-machine>.

**Monetized Costs of the Proposed Regulations**

*1. Administrative Costs*

While some SLAs may need to only align the definitions in their policies and procedures with the new proposed Federal definitions applicable to the RSVFP, other SLAs and VR agencies will likely need to make extensive changes. To ensure that the Department does not underestimate the burden associated with these proposed regulations in part 395, we are calculating the administrative cost burden to be \$209,299.41 assuming all 51 SLAs operating their RSVFP review the revised regulations and make conforming changes to their policies and procedures.

The Department estimates that each SLA would have one director spend an average of 25 hours, at an hourly rate of \$135.72 (\$67.86<sup>53</sup> per hour multiplied by 2.0 to reflect the loaded wage rate), reviewing the regulations and making conforming changes to their rules. This would result in a total cost to the State Government of \$173,043 (51 SLAs × 25 hours × \$135.72 per hour).

The Department estimates that each SLA would have one State Government attorney spend an average of three hours, at an hourly rate of \$102.32 (\$51.16 per hour multiplied by 2.0 to reflect the loaded wage rate), reviewing the regulations and the conforming changes to their rules. This would result in a total cost to the State Government of \$15,654.96 (51 SLAs × 3 hours per SLA × \$102.32 per hour).

The Department estimates that it would take three hours for an RSA staff member to review each State rule submitted. This would result in a total review time of 153 hours, with an hourly loaded wage rate to the Government of \$61.96. This would result in a total cost to the Government of \$9,479.88 (51 submissions × 3 hours per submission × \$61.96 per hour).

The Department estimates that it would take three hours for an attorney from the Office of the General Counsel to review each State rule submitted. This would result in a total review time of 153 hours, with an hourly loaded wage rate to the Federal government of

\$72.69. This would result in a total cost to the Federal government of \$11,121.57 (51 submissions × 3 hours per submission × \$111.03 per hour).

In total, we estimate that total costs of \$188,698 to State governments and total costs of \$20,601 to the Department in Year 1 for grand total Year 1 cost of \$209,299. The Department estimates net present value cost of \$209,299 over ten years. This is equivalent to an annualized net cost of \$23,300 over ten years.

**ANNUAL ADMINISTRATIVE COSTS, YEARS 1 THROUGH 10**

Year	Net annual costs
Year 1 .....	\$209,299
Year 2 .....	0
Year 3 .....	0
Year 4 .....	0
Year 5 .....	0
Year 6 .....	0
Year 7 .....	0
Year 8 .....	0
Year 9 .....	0
Year 10 .....	0
<b>Total Net Present Value (NPV) .....</b>	<b>209,299</b>
<b>Annualized .....</b>	<b>23,300</b>

**Assumptions**

We assume that licensed blind vendors and vending facility customers would support the proposed changes as the proposed changes are likely to result in the availability of a wider variety of articles sold on Federal and other property, more modern business models focused on customer convenience, additional payment options in vending machines, and a resultant increase in the revenue generated by vending facilities and vending machines.

While we assume that SLAs would support most of the proposed changes, some SLAs may have concerns that these changes could cause them to consider altering plans in their State.

We acknowledge that some Federal agencies may have concerns about the proposed changes to what can be sold through vending facilities and machines. Specifically, because the definition of vending machines would

be clarified by defining “articles” to include tangible personal property, additional articles that have not traditionally been considered articles sold through vending machines would fall under the proposed definition. As a result, the requirement for extending a priority to licensed blind vendors for vending machines on Federal property would apply, as well as the vending machine income sharing provisions in the R–S Act requiring Federal agencies to pay SLAs a portion of vending machine income earned by agencies when contractors operate vending machines on the Federal property. In addition, the revised definitions may raise concerns for such agencies about applying the priority for blind vendors to operate more modern business models for vending facilities where they had not previously considered those business models covered under the R–S Act.

*Accounting Statement*

As required by OMB Circular A–4, in the following table, the Department has prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides the best estimate of the changes in annual costs of these proposed regulations. As discussed throughout the RIA, the Department is not able to monetize the projected benefits of these proposed regulations because it is unclear how many licensed blind vendors and SLAs will take advantage of the flexibilities afforded by these proposed regulations since some are already doing so based on the R–S Act itself. Finally, as the Department described previously in the background of the preamble, the RSVFP suffered some declines as a result of the COVID–19 pandemic and the closure of Federal buildings. However, even if more individuals, whether employees or visitors, were to frequent Federal office buildings and RSVFP vending facilities and vending machines, their increased use would result in increased costs to the RSVFP. Therefore, it is difficult to project any net benefit these policy changes would have on the RSVFP.

**ACCOUNTING STATEMENT ANNUALIZED COSTS**

	Annualized costs
	2% discount rate
SLAs updating policies and procedures .....	\$21,007

<sup>53</sup> BLS Occupational Employment and Wage Statistics, May 2023, State Government Chief Executive 11–1011.

ACCOUNTING STATEMENT ANNUALIZED COSTS—Continued

	Annualized costs
	2% discount rate
Department of Education staff review .....	2,293
Total .....	23,300

**Alternatives Considered**

We considered adding a definition of appropriate auxiliary equipment while maintaining all other regulatory language as currently written, including additional examples of articles that may be sold in vending facilities and vending machines instead of defining “articles” to be tangible personal property and continuing the practice of permitting blind vendors to dispense services through vending machines. The Department decided the best course of action was to proceed with the proposals in this document because we believe these proposed changes strike the right balance of clarity, consistency, and future flexibility; costs to Federal agencies, SLAs, and licensed blind vendors; meeting the needs of today’s customer and supporting current and future technological advances and industry trends while implementing Congressional intent to increase employment opportunities for blind individuals.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand. The Department invites comments on how to make the regulation easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 395.1 Terms.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

**Regulatory Flexibility Act Certification**

The Department certifies that the proposed regulation would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration Size Standards define vending machine operators (NAICS code 445132) as “small entities” if they have a total annual revenue below \$18,500,000 and convenience operators as “small entities” if they have a total annual revenue below \$32,000,000. These proposed regulations would affect blind vendors and other concessioners that meet this definition; therefore, these proposed regulations would affect small entities, but they would not have a significant economic impact on these entities based on the information currently available.

The proposed regulations would not compel blind vendors to modify their operations. While SLAs may request additional permits and contracts, there is nothing that would require a blind vendor to pursue such opportunities. Proposed changes would provide blind vendors with the opportunity to modernize their vending operations and increase the types of vending facilities they might pursue. Adoption of such opportunities is voluntary.

For concessioners who are not licensed blind vendors on NPS sites, future contracts may no longer be available if the visitor services offered meet the revised definition of “vending facility.” Despite the potential opportunities on at least 46 NPS sites, we do not have data that would support the determination that this would have

a significant economic impact on the entities.

For this reason, the proposed priorities would impose little to no burden on small entities. Blind vendors would determine whether to avail themselves of these opportunities and could weigh any associated costs against the likelihood of such changes resulting in additional off-setting revenue. Blind vendors most likely would implement changes or pursue new vending opportunities only if they determine that the likely revenue exceeds the costs associated with implementing the changes. Thus, licensed blind vendors would likely experience a positive economic impact due to these proposed regulations.

Concessioners who are not licensed blind vendors on NPS sites may be unable to renew their concession contracts; however, there is no guarantee of future contracts for such concessioners.

The Department invites comment regarding our estimates and whether this proposed rule may have a significant economic impact on a substantial number of small entities, particularly concessioners on NPS sites.

**Paperwork Reduction Act of 1995**

These proposed regulations do not contain any information collection requirements.

**Intergovernmental Review**

The RSVFP is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

In accordance with section 411 of the General Education Provisions Act (GEPA), 20 U.S.C. 1221e–4, the Department particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the

requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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#### List of Subjects in 34 CFR Part 395

Blind, Concessions, Federal buildings and facilities, Reporting and recordkeeping requirements.

**Miguel A. Cardona,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Department proposes to revise part 395 of title 34 of the Code of Federal Regulations as follows:

#### **PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY**

■ 1. The authority citation for part 395 is revised to read as follows:

**Authority:** 20 U.S.C. 107(b), 107a(a) and 107d–3(g).

- 2. Section 395.1 is amended by:
  - a. Revising paragraphs (x) and (y).
  - b. Adding paragraph (cc).

The revisions and additions read as follows:

#### **§ 395.1 Terms.**

\* \* \* \* \*

(x) *Vending facility* means automatic vending machines, cafeterias, snack bars, cart service, shelters, and counters, and their appropriate auxiliary equipment—

(1) Which are necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, tickets for any lottery authorized by State law and conducted by an agency of that State, and other articles or services—

(i) Dispensed automatically or manually;

(ii) Prepared on or off the premises in accordance with all applicable health laws; and

(2) Which may be operated by blind licensees pursuant to a contract or permit.

(3) Which include facilities meeting the requirements of paragraphs (x)(1) and (2), such as micro markets, laundry or catering establishments, retail stores, gift shops, and temporary or mobile establishments, such as food trucks and pop-up stands.

(y) *Vending machine* means a machine that—

(1) Automatically dispenses articles;

(2) Is operated by cash or electronic payment methods; and

(3) Does not include a self-serve postal center, or any part thereof, operated by the United Postal Service

for the sale of postage stamps or other postal products and services.

\* \* \* \* \*

(cc) *Articles* mean items of tangible personal property that can be felt or touched by an individual and can be physically relocated.

■ 3. Section 395.30 is amended by revising paragraph (c) to read as follows:

#### **§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.**

\* \* \* \* \*

(c) Priority in the operation of vending facilities on Federal property administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. To the extent that these agencies seek to provide visitor services that meet the definition of “vending facility” under 34 CFR 395.1(x) and are not combined with other visitor services that do not meet that definition, the priority for blind vendors applies.

■ 4. Subpart D is added to part 395 to read as follows:

#### **Subpart D—Severability**

Sec.  
395.50 Severability.  
395.51 Reserved.

#### **§ 395.50 Severability.**

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

#### **§ 395.51 [Reserved]**

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