



Healthy Vending and the Randolph-Sheppard Act

Vendors that operate vending machines, snack stands, and cafeterias are important stakeholders in any healthy food initiative. These types of food outlets, particularly vending machines, can be found in many places in a community, including worksites, parks, and other public places. All too often, these operations sell snacks and beverages that are high in calories, added sugars, and salt but with little nutritional value.

For example, a recent report found that only 5% of food vending options on public property are healthy. (See [Vending Contradictions: Snack and Beverage Options on Public Property](#), listed in the resources section.) One way that federal, state, and local governments can promote easier access to healthy foods and beverages for their residents is by implementing evidence-based nutrition standards for food and beverages served and sold on government property. For these efforts, an understanding of the federal Randolph-Sheppard Act is crucial. The Randolph-Sheppard Act and similar state laws give legally blind vendors priority in operating vending machines and other concession services on many types of government property. This means that legally blind vendors can influence what is sold in these facilities.



The Public Health Law Center has developed a series of resources to support policies that promote healthier food and beverages in public places. This legal guide discusses federal and state laws that give priority to legally blind vendors for vending facilities on government property, and their implications for healthy vending efforts.



The overall objective of the Randolph-Sheppard Act is to promote employment opportunities for legally blind individuals.

What is the Randolph-Sheppard Act?

The Randolph-Sheppard Act (RSA) is a federal law that gives legally blind vendors priority over other vendors to operate concession services or “vending facilities” (e.g., vending machines, cafeterias, and snack bars¹) on most federal property.² First enacted nearly 100 years ago, the overall objective of the RSA is to promote employment opportunities for legally blind individuals. To implement the RSA, each state has established an occupational program, typically referred to as business enterprise programs or BEPs. These BEPs provide self-employment opportunities and vocational support for participants.³ The RSA calls for each state to designate a state licensing agency (SLA) to oversee the BEP and implement

other RSA provisions. The SLA identifies which locations in the state are subject to the RSA and evaluates the location’s potential as a profitable business opportunity for participants.⁴ It recruits, trains, and licenses legally blind individuals to participate in the BEP. Each BEP also has a Blind Vendors Committee that works actively with the SLA on making major decisions about vendor management, helps handle the grievance process, and conducts other leadership activities. So SLAs and blind vendors are important stakeholders in any healthy vending movement.

What does it mean that blind vendors get “priority” under the Randolph-Sheppard Act?

The RSA enhances the bargaining power of SLA and blind vendors in securing and operating vending facilities. Cafeteria operations are governed by contracts, and other vending facility operations are governed by permits. Typically, once a viable site for a vending facility is identified, the SLA can apply

for a permit from the federal agency that owns or controls the site, or, for cafeterias, can submit a bid to secure the contract to operate the cafeteria. The permit application or bid should include all the key terms and conditions that are to be followed by the vendor.⁵ For cafeteria contracts, if the SLA's bid is within competitive range (e.g., meets price and specified standards), then the agency generally must award the contract to the SLA or the blind vendor.⁶ If the agency declines a contract bid or permit application, it must explain why in writing.⁷ Permits must be for an indefinite period of time, and the SLA, in consultation with the property's managing department or agency, decides what products or services may be sold under the permit.⁸ For cafeteria contracts, the law does not require that the contracts be for an indefinite period of time.

Before the agency or department can approach other (non-blind) vendors about operating a vending facility on its property, it must obtain a written waiver from the SLA.⁹ The RSA also requires that if a non-blind vendor directly competes with a blind vendor operated facility at the same location, a portion of the income from the non-blind vendor must be given to the blind vendor or SLA.¹⁰

Although the priority for blind vendors and SLAs for vending facilities on government property is powerful, it is not unlimited. Because government agencies must provide free utilities and other services to support RSA vending facilities, the RSA does not require agencies to place vending machines in

every site that the SLA may request. In determining whether to place a new facility (or continue an existing one), the agency can take into consideration energy costs, which can be considerable for vending machines, and must ensure that "sufficient funds are legally available to cover all costs for which the Government may be responsible."¹¹

Does the Randolph-Sheppard Act also apply to state and local government buildings or property?

Although the RSA only applies to federal property, every state except for North and South Dakota¹² has adopted laws similar to the RSA, often referred to as mini-RSAs. These mini-RSAs typically grant blind vendors some form of priority to operate vending facilities on property owned or leased by the state, and sometimes on or in local government property and buildings as well.

These state laws vary in how they define vending facilities and the scope of the priority for blind vendors. For example, Minnesota's blind vendor law gives the SLA exclusive authority to establish and operate *vending stands* and *vending machines* in certain state educational institutions, and for all state departments and agencies except for Department of Natural Resource properties that are operated directly by the Division of State Parks and not privately leased.¹³

Some of the state blind vendor laws extend to city, county, and other local property as well.¹⁴ For example, Massachusetts' blind vendor law applies to both state (commonwealth) property and county property.¹⁵ Thus, a city like Boston would not be bound by the state's mini-RSA. However, any federal, state, or county property within Boston is still subject to the federal RSA and the state's law, respectively. In another example, Utah's mini-RSA requires that blind vendors be given a preference in operating food services in state, county, city and town government buildings.¹⁶

The RSA and its state law counterparts make SLAs, BEP directors, Blind Vendor Committees, and individual blind vendors powerful agents with respect to vending and concession services on a wide variety of government property.

For more information about state blind vendor laws, go to Public Health Law Center's website at <http://www.publichealthlawcenter.org/topics/healthy-eating/healthy-vending>.

What does the Randolph-Sheppard Act mean for healthy vending efforts?

The RSA and its state law counterparts make SLAs, BEP directors, Blind Vendor Committees, and individual blind vendors powerful agents with respect to vending and other concession services on a wide variety of government property. The legal priority for blind vendors means not only do they have a competitive advantage in terms of securing the right to operate a facility, but also that the SLA has

Blind Vendor Advocacy Groups

Groups that represent blind vendor interests are also key stakeholders in any effort to promote healthy vending on government property. National advocacy organizations, state commissions for the blind, and local business trade associations offer resources to help blind persons achieve economic and vocational independence as licensed blind vendors through Randolph-Sheppard BEPs. National advocacy groups such as the National Association of Blind Merchants (NABM) and the Randolph-Sheppard Vendors of America (RSVA) provide a collective voice for BEP participants. Many vendor organizations, including these groups, can be wary of initiatives that they fear will negatively impact their members. Thus, at times they have used their lobbying power to oppose efforts to pass state and local laws to implement healthy vending initiatives.¹⁷ In other cases, however, blind vendors have been supportive of these initiatives.

Experience is showing that healthy vending initiatives can actually result in increased sales, especially when pricing, placement, and other marketing strategies are used.

significant influence over the terms and conditions that are included in vending permits and cafeteria contracts, including terms regarding what products to sell and, in certain cases, even what prices may be charged.¹⁸ However, participating vendors also must comply with applicable policies of the federal agency that owns the property, as well as with federal, state, and local laws and regulations.¹⁹ This includes applicable calorie labeling requirements,²⁰ and laws establishing nutrition standards for food sold on public property. For example, California (which has a mini-RSA²¹) passed a law in 2008 that phased in requirements that at least 35% of the food and at least two-thirds of the beverages offered in vending machines on state property meet certain modest nutritional standards by 2011.²²

At times, blind vendor groups, similar to other vendor groups, have used their influence to lobby against legislative proposals to set nutritional standards for foods sold on state government property.²³ But blind vendors can also be supportive of these efforts. Garnering vendor support is important because even if a law or policy is in place, experience has shown that it can be undermined if implementation is lackluster or spotty due to lack of support from vendors, site managers, and customers. Practically speaking, vendors must locate products, stock machines and keep inventory up to date, and are on the front lines of any financial impact, both positive and negative. Many vendors may be initially reluctant to significantly increase healthy selections due to fears that this would result in reduced profits. An SLA or blind vendor may believe the agency's



healthy vending policy is not feasible from a market perspective. Unless vendors can get help in identifying what products to buy, where to get them from, and how to promote them, vendors may have difficulty implementing a healthy vending policy effectively.

Fortunately, experience is showing that healthy vending initiatives can actually result in increased sales, especially when pricing, placement, and other marketing strategies are used to encourage healthier purchases. As a result, there is a growing body of resources to help governmental entities and vendors navigate through concerns to create and implement successful operations. (See below for links to some of these resources).

Failing to comply with the terms of a permit or contract may result in the SLA or blind vendor

losing their right to operate a vending facility on the property.²⁴ But this of course is an undesirable scenario for all parties. In such a situation, the SLA or licensed blind vendor could file a complaint regarding alleged violations of the RSA,²⁵ leading to delay and adversarial dynamics. In other situations, the implementation of healthy vending efforts might be delayed if blind vendors are unwilling to bid on contracts or agree to a permit's conditions because they include strong nutrition standards. While the government agency or site could take the necessary steps to get permission to work with non-blind vendors, this is likely to be a protracted and controversial process.

Blind vendors have political and social clout, for good reason. Government agencies and public health

advocates should seek to engage blind vendors in the development and implementation of healthy vending policies, and invest in building relationships with key representatives. See below for resources designed to support positive partnerships with blind vendors and other vendor groups.

How can policymakers and public health advocates support the Randolph-Sheppard program and the need for healthier options in vending machines?

Many state and local governments that want to increase access to healthy foods and beverages in vending machines on public property also support the public policy goals of the RSA. Policymakers and public health advocates are recognizing that they need to engage blind vendors in healthy vending efforts early on; even so the road can be a bumpy one. For example, in Tennessee (which has a mini-RSA²⁶) the governor signed an executive order in 2010 that called for the establishment of nutritional standards for vending machines on state executive branch properties.²⁷ To help address the concerns of the SLA and blind vendors, the governor also required that (1) the nutrition standard setting process include the blind vendor representatives, (2) state agencies amend existing permits once the new standards were established and (3) pricing and other incentives that encourage people to purchase healthier options be included.²⁸

This helped smooth the path for establishing an initial set of standards that would apply to 25% of products, but when efforts were made to strengthen the nutritional standards and apply them to 50% of products, the National Federation of the Blind of Tennessee passed a resolution strongly opposing these efforts.²⁹ The resulting compromise was improved nutritional guidelines and a 30% benchmark.

Around the same time that this was happening, Washington's governor issued Executive Order 13-06,

Working together, advocates and blind vendors have addressed vendors' fears while also advancing the goal of improving the nutritional quality of foods and beverages sold.

which established a broad worksite wellness policy for state employees, including a requirement that all state agencies provide healthful food and beverages in all food venues.³⁰

The workgroup that developed the nutrition guidelines and implementation steps included representatives from the state's Department of Services for the Blind, which administers the state's blind vendor program, as well as representatives from key state agencies such as the Department of Corrections (a large food purchaser), and outside groups. The Department of Corrections' commitment and progress in moving towards healthy vending helped to convince the Blind Services representatives that the initiative was going to succeed.

What are some strategies for forming constructive relationships with vendors?

A key strategy is identifying and including representatives of blind vendor interests as part of the stakeholder group, from the beginning. The most appropriate representative may vary from state to state — it is likely to be the BEP administrator/director, but it could also be the Blind Vendors Committee, or individual members, or some or all of the above. The National Council of State Agencies for the Blind maintains a list of the BEP directors in all the states and territories.³¹ Focus on the common ground as much as possible — both supporters of healthy vending movements and vendors recognize that if the products do not sell, the policy will not be successful. Nutritional standards for vending machines should be evidence-based, but also should take into account what vendors are doing already, and what products are

actually available in the region. The implementation plan should factor in adequate time for vendors to transition their products and acclimate customers to the changes. Marketing strategies that encourage people to purchase healthier options, including pricing, product placement, and promotional materials, should be included in policies and guidelines. Vendors should be supported through communications and outreach activities (such as newsletter items, signs, surveys, and taste-tests) to promote customer buy-in and support.

Moving forward with healthy vending policies

Based on experiences so far, successfully adopting and implementing a healthy vending law or policy requires policymakers and public health advocates

to cultivate common ground with vendors, and to be prepared to offer guidance and technical support. Working together, advocates and blind vendors have found ways to address vendors' fears while also advancing the goal of improving the nutritional quality of foods and beverages sold. Vendors are coming to understand that market forces are changing. New studies and market research continue to emerge showing that consumers increasingly want healthy food and beverage products.

The emerging evidence is showing that healthy vending efforts, with planning and smart implementation, can be just as profitable and successful — if not more — as the increasingly outdated business model based on junk food offerings.

Additional Resources

Resources to help develop and implement healthy vending policies

- Washington's Department of Health's [Choose Well, Live Well website](#)³² includes the nutrition guidelines, implementation guide, links to printable banners and signs and communications materials, and other tools used to support implementation of the nutrition guidelines for food served and sold on state property, as required by Washington's Executive Order 13-06.
- Iowa's Department of Public Health has developed the [Nutritional Environment Measures Survey — Vending \(NEMS-V\) website](#)³³ with sample nutrition standards and purchasing policies, a vending policy toolkit, success stories, and a healthy choice calculator smartphone app.
- Many California cities and counties are implementing laws and policies that have a 50% and even 100% healthier/healthy standard for food sold on local government property. For examples of policies, see:
 - Bay Area Nutrition & Physical Activity Collaborative Healthy Vending Machine Toolkit, http://www.banpac.org/healthy_vending_machine_toolkit.htm
 - Seattle & King County Public Health Department³⁴ created a set of [Healthy Vending Guidelines](#) and a [Healthy Vending Implementation Toolkit](#) that includes sample policy language, promotional materials, and communications examples.
 - New York City's [Healthy Hospital Food initiative website](#)³⁵ provides:
 - Nutrition standards for cafeterias, food vending, and beverage vending outlets
 - Implementation guides for each outlet, including planograms for vending machines
 - Sample promotional materials

- A collaborative team from the U.S. Department of Health and Human Services and the General Services Administration developed the [Health and Sustainability Guidelines for Federal Concessions and Vending Operations](#), which includes nutrition

standards and other guidelines to support healthier, sustainable food service and vending policies. These Guidelines have been implemented by over 20 federal departments.³⁶

Studies and other resources to address vendor or institutional questions about possible revenue and sales impact

- A [recent study](#) of the Chicago Parks District's healthier vending policy (which requires 100% of products to meet modest nutrition standards) found that the overall average monthly sales per machine increased by over 400% (from \$84 to \$371) during the first contract year, and that 98% of patrons surveyed stated they would buy snacks again.³⁸
- The International Food Information Council (a food industry trade group), conducts annual surveys on consumer attitudes about food and reports on trends. Its [2014 consumer survey](#) found that the importance of healthfulness (which has long been one of the top three factors that influence food purchasing decisions) has increased significantly, with 71% of consumers now reporting that they are influenced by healthfulness when buying food and beverages — up

15% from 2011. In contrast, taste and price (the number one and two factors) have remained relatively unchanged at 90% and 73%, respectively.³⁹

- The Association of State & Territorial Public Health Nutrition Directors [Healthy Vending Machine Sales Data](#)⁴⁰ webpage has a collection of data and resources on healthy vending, including some resources related to the financial impact of selling healthier foods.
- The Center for the Science in the Public Interest (CSPI) has created fact sheets to help address some common vendor concerns:
 - [Why Offer Healthier Options? The Business Case](#)⁴¹
 - [Financial Implications of Healthier Vending](#), (summarizing several studies and reports on the financial outcomes of healthy vending efforts)⁴²

General resources

- Public Health Law Center's [Healthy Vending webpage](#) has several resources to support healthier food and beverage outlets in worksites and public spaces, including [Tips for Better Vending](#)⁴³ and [Five Steps to Food and Beverage Success](#).⁴⁴
- CSPI's [Healthier Food Choices in Public Places](#)⁴⁵ webpage has links to many additional resources, including these webinars and report:
 - Healthy Vending and Working With Blind Vendors (2013)

- The Journey to EO 13-06: How Washington State Adopted a Policy to Improve Food on State Property (2014)
- [Vending Contradictions: Snack and Beverage Options on Public Property](#) (Oct. 2014 report)⁴⁶
- American Heart Association has developed several resources to promote healthy food and beverages in worksites:
 - AHA's [Healthy Workplace Food and Beverage Toolkit](#)⁴⁷
 - AHA has a set of [recommended nutrition standards](#) for workplace food procurement⁴⁸

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Endnotes

- ¹ 20 U.S.C. § 107e (7) (2014) (“vending facility” includes automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other auxiliary equipment). *See also* 41 C.F.R. § 102-74.40 (2014).
- ² U.S. 20 U.S.C. § 107e (3) (2014) (“federal property” includes buildings or lands “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),” the District of Columbia, or any other territory or possession of the United States).
- ³ 20 U.S.C. § 107 et seq. (2014). The Randolph-Sheppard Act was originally passed in 1934.
- ⁴ 20 U.S.C. § 107a(c) (2014).
- ⁵ 34 C.F.R. §§ 395.16 and 395.35 (2014).
- ⁶ *New Hampshire v. Ramsey*, 366 F.3d 1, 27-29 (1st Cir. 2004) (regarding priority in cafeteria services.) *See also*, 20 U.S.C. § 107(b) (2014) and 34 C.F.R. § 395.33 and 41 C.F.R. § 102-74.60 (2014).
- ⁷ 34 C.F.R. §§ 395.16 and 395.30 (2014).
- ⁸ 34 C.F.R. § 395.35(c) (3) (2014).
- ⁹ *New Hampshire v. Ramsey*, 366 F.3d 1, 28 (1st Cir. 2004).
- ¹⁰ 20 U.S.C. § 107d-3 (7) (2014) and 34 C.F.R. § 395.32 (2014).
- ¹¹ 41 C.F.R. § 102-74.45(b) (2014).
- ¹² South Dakota has an Executive Policy issued by the state’s Department of Administration that encourages contracts with blind vendors in state-owned or leased buildings. *See* https://boa.sd.gov/services/government/policies/ES-08_vending_machines.pdf.
- ¹³ Minn. Stat. Ann. § 248.07 (2014).
- ¹⁴ *See, e.g.*, Cal. Welf. & Inst. Code § 19625(c) (2014) (requiring priority to be given to blind vendors on state property, and encouraging establishment of licensed blind vendors on all property within the state, including private, city, and county-owned property); and T.C.A. § 71-4-501 et seq. (2014) (requiring priority to be given to blind vendors on all public property within the state, including local government-owned property, with limited exceptions).
- ¹⁵ Mass. Gen. Laws Ann. ch. 6, § 133A (“...any buildings or property of the commonwealth, or any county thereof, with the exception of any building, land, or other real property under the jurisdiction of any state university or state institution of higher learning...shall adopt such polices...blind persons licensed by the commission for the blind will be given preference in the establishment and operation of vending facilities on property under their jurisdiction”).
- ¹⁶ Utah Code Ann. §§ 55-5 6 (2) (a) and 55-6-7 (2014). Utah’s law states that a government agency that wants to offer food service in a public office building must first attempt to negotiate in good faith with the state’s Division of Services for the Blind and Visually Impaired, and may only seek a contract or concession with a non-blind vendor if the Division “is not willing to or cannot satisfactorily provide the food service.” Utah Code Ann. § 55-5-7(1) and (2).

- ¹⁷ VENDINGMARKETWATCH.COM, *NAMA, CAVC and Blind Vendors Block Healthy Vending Bill*, <http://www.vending-marketwatch.com/news/10950802/nama-cavc-and-blind-vendors-block-healthy-vending-bill> (May 29, 2013); S. Law, *Battle for Healthy Snacks*, PORTLAND TRIBUNE (May 26, 2011) available at <http://portlandtribune.com/pt/9-news/7338-battle-for-healthy-snacks> (last accessed Sept. 17, 2014).
- ¹⁸ 34 C.F.R. § 395.35(c) (2014). See *Minn. Dept. of Jobs and Training v. Riley*, 18 F.3d 606, 609-10 (8th Cir. 1994) (Veterans Canteen Services could not limit blind vendor's merchandise selection, prices, or charge a commission on vendor's sales at a vending facility located in a Veterans Affairs Medical Center through a contract, but was required to use the RSA permitting process). See also, *Kentucky State Univ. v. Kentucky Dept. for the Blind*, 923 S.W. 2d 296 (Ky Ct. App. 1996) (state law extending RSA to state property prohibited state university from unilaterally prohibiting blind vendor from selling non-Coca Cola products, despite university's exclusive contract with Coca-Cola).
- ¹⁹ 34 C.F.R. § 395.4(a) and 41 C.F.R. § 102-74.45(a) (2014).
- ²⁰ Another example is the federal menu labeling law, which requires vending machine owners and operators of at least 20 vending machines must provide nutrition labeling for foods sold in vending machines. Vendors with fewer machines can opt in to the federal requirements. Patient Protection and Affordable Care Act, Sec. 4205 (Public Law 111-148).
- ²¹ Cal. Welf. & Inst. Code § 19625(c) (2014).
- ²² Cal. Gov. Code § 11005.4 (2014).
- ²³ See note 17 above.
- ²⁴ 34 C.F.R. § 395.35(b) (2014).
- ²⁵ 20 U.S.C. § 107d-1(a), (b) (2014).
- ²⁶ T.C.A. § 71-4-501 et seq. (2014).
- ²⁷ Tenn. Exec. Order No. 69 (August 6, 2010), available at <http://www.tn.gov/sos/pub/execorders/exec-orders-bred69.pdf>.
- ²⁸ *Id.*
- ²⁹ National Federation of the Blind of Tennessee Resolution 2013-02, available at <http://www.blindmerchants.org/blogs/nabm/2013/3/12/compromise-or-confrontation>.
- ³⁰ Wash. Exec. Order No. 13-06 (October 30, 2013), available at <http://governor.wa.gov/office/execorders/documents/13-06.pdf>.
- ³¹ The list can be searched by state at <http://www.ncsab.org/bep-directors.aspx>.
- ³² <http://www.doh.wa.gov/CommunityandEnvironment/WorksiteWellness/HealthyNutritionGuidelines>.
- ³³ <http://www.nems-v.com/Index.html>.
- ³⁴ <http://www.kingcounty.gov/healthservices/health/nutrition/tips.aspx>.
- ³⁵ <http://www.nyc.gov/html/doh/html/living/cardio-hospital-food-initiative.shtml>.
- ³⁶ HEALTH AND SUSTAINABILITY GUIDELINES FOR FEDERAL CONCESSIONS AND VENDING OPERATIONS (April 2012) and other pertinent information can be found at <http://www.gsa.gov/portal/content/104429>.
- ³⁷ <http://www.cityofchicago.org/content/dam/city/depts/cdph/CDPH/BlueprintHealthierVending2013.pdf>.
- ³⁸ Maryann Mason et al., *Working With Community Partners to Implement and Evaluate the Chicago Park District's 100% Healthier Snack Vending Initiative*, 11 PREVENTING CHRONIC DISEASE E135 (2014), available at http://www.cdc.gov/pcd/issues/2014/pdf/14_0141.pdf.
- ³⁹ Internat'l Food and Information Council, 2014 Food & Health Survey Executive Summary at 2 (2014), <http://bit.ly/1p8ouRO>.
- ⁴⁰ http://astphnd.org/resource_read.php?resource_id=225&sid=a9cb71&origin=&category
- ⁴¹ <http://cspinet.org/images/healthier-options-fact-sheet.pdf>.
- ⁴² http://cspinet.org/new/pdf/revenue_fact_sheet.pdf.
- ⁴³ <http://bit.ly/1uPneJO>,
- ⁴⁴ <http://bit.ly/1qWM2yD>.
- ⁴⁵ <http://www.cspinet.org/nutritionpolicy/foodstandards.html>.
- ⁴⁶ <http://www.cspinet.org/vendingcontradictions.pdf>.
- ⁴⁷ http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_320781.pdf.
- ⁴⁸ http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_320781.pdf.