**State of California**

**Department of Rehabilitation**

**721 Capitol Mall**

**Sacramento, California 95814**

**Title 9. Rehabilitative and Developmental Services**

**Division 3. Department of Rehabilitation**

**INITIAL STATEMENT OF REASONS**

**INTRODUCTION**

The Department of Rehabilitation (hereafter “Department” or “DOR”) is the State Licensing Agency designated by the United States Department of Education responsible for administering the Business Enterprises Program for the Blind (hereafter “BEP”) in accordance with the Randolph-Sheppard Act (20 U.S.C. § 107 et seq.), Welfare and Institutions Code sections 19625 et seq., and implementing federal and state regulations (34 C.F.R. 395 et seq., Cal. Code of Regs., tit. 9, § 7210 et seq.). The purpose of the BEP is to provide people who are legally blind with remunerative employment, enlarging their economic opportunities, and stimulating their efforts in striving to make themselves self-supporting. Eligible individuals are trained and licensed as vendors by the Department to operate vending facilities, including, but not limited to, vending machines, snack bars, cafeteria, sundry stands, and coffee carts, on state, federal, and other property. Currently, there are 51 vendors operating vending facilities in the program.

The Department, through its BEP program, enters military food service contracts with the United States Department of Defense (“DOD”). These federal vending facilities are different from those that are state or local-government owned in that they are awarded in response to a solicitation instead of BEP being granted permits to operate them. The solicitation functions as a legally binding contract setting forth the operational obligations and responsibilities associated with the military food facility. The current regulations state that as part of the vendor selection interview process, a qualified applicant shall submit a business plan for each vending facility he or she is applying to operate (Cal. Code of Regs., tit. 9, § 7214.2, 7214.3, and 7214.4). It has been the Department’s longstanding view that for DOD food service opportunities, the contract itself serves as the business plan and that submitting an applicant’s personal business plan, pursuant to the current regulations, is functionally irrelevant. Accordingly, the Department proposes to amend the relevant sections of the California Code of Regulations to include language explicitly excluding the requirement or submission of business plans in the vendor selection processes of DOD facilities.

Laws governing the program establish an elected body of vendors, known as the California Vendors Policy Committee (“CVPC”), that is fully representative of all vendors in the program. The CVPC has the statutory responsibility of participating with the Department in major administrative decisions and policy and program development. Further, changes in major administrative policy or program development within the discretion of the Department shall occur only after consultation with the CVPC. That consultation was completed in February 2025.

In accordance with section 395.4(a) of title 34 of the Code of Federal Regulations, the Secretary of the United States Department of Education must approve these regulatory amendments before they can become effective. The Department will coordinate with the Secretary of the United States Department of Education and with the California Office of Administrative Law to ensure this requirement is met and noted in the History section of the regulations.

**PROBLEM AGENCY INTENDS TO ADDRESS**

On multiple occasions in recent years, a few vendors in the BEP program had submitted business plans that were not required during bid processes for DOD vending facilities. The vendors subsequently objected when the business plans were not considered, arguing that had the business plan been considered, they would have been selected to operate the DOD facility, when they were not. The vendors appealed the decisions with the Department of General Services to the Office of Administrative Hearings (“OAH”). Because this happened more than once, with OAH sometimes siding with the Department and other times with the vendor, it became clear that the ambiguity in the regulations concerning business plans was causing problems. As a result, it was decided by the Department that the regulations needed to be specific on the matter. On October 17, 2024, DOR representatives attended the CVPC Rules Subcommittee Meeting during which the DOR representatives presented the proposed revised language to the relevant sections of the California Code of Regulations concerning the exclusion of the business plan requirement for DOD facilities. The CVPC presented the Department’s proposal to amend sections 7214.2, 7214.3 and 7214.4 of title 9 of the California Code of Regulations at the CVPC meeting held on February 6, 2025, where it was voted on and approved by the CVPC.

**Authority**:

34 CFR Sections 395.3 and 395.4; and Sections 19006 and 19016, Welfare and Institutions Code.

**Reference:**

20 USC Section 107a; 34 CFR Sections 395.5, 395.7; Welfare and Institutions Code Sections 19632, and 19639.

**BENEFITS ANTICIPATED FROM REGULATORY ACTION**

The anticipated benefits of amending these sections of Title 9 of the California Code of Regulations include providing vendors and other interested parties with clarification as to requirements for vendor selection for vending facilities and eliminating an unnecessary submission as part of the process for DOD facilities.

Eliminating the requirement for qualified vendor applicants to submit a business plan as part of the application process would offer clear benefits, because the DOD already provides a detailed contract outlining scope of work and expectations as to how to operate the military food facility. It will reduce the administrative burden and streamline application reviews by removing a redundant evaluation component. It will improve accessibility and remove a barrier for applicants with limited experience in formal business planning. It will reduce subjectivity in evaluations by the Selection Committee for Vending Facilities (hereinafter, “Selection Committee”) as business plans may lead to subjective bias, especially when multiple reviewers interpret business plans differently when assessed in relation to the specific requirements stipulated in the DOD contract.

Consequently, over many years, Department attorneys and managers have attended hearings and appeals initiated by unsuccessful applicants for DOD vending location contracts, who contested their non-selection on their inability to submit a business plan during the vendor selection process. Adopting the changes to relevant sections in the California Code of Regulations would alleviate the administrative workload associated with recurring appeals on this matter, thereby improving the Department’s overall efficiency.

All the proposed amendments are consistent with the needs and requests of the program, the vendors, and the CVPC.

**SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AS REQUIRED BY GOVERNMENT CODE SECTION 11346.2(b)(1)**

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the problem, administrative requirement, or other circumstances that each adoption is intended to address are as follows:

### § 7214.2. Resume and Business Plan

Purpose: The purpose of the added language in section 7214.2(a)(3) is to make clear that no business plan will be allowed when applying for, or during the selection interview for, DOD vending facilities.

Necessity: This language is needed because, as stated in section 7214.2, a business plan is not only allowed but required for other non-DOD facility vending contract applications and selection interviews. This has caused appeals from vendors who apply for the DOD vending facilities. They submit a business plan and object when the plan is not considered by the Selection Committee. However, the DOD never considers business plans. As a result, it is necessary to make this explicit in the regulation so there are no longer appeals filed based on the DOD application process related to business plans. The proposed amendments make clear that a business plan will not be considered for DOD vending facilities.

### § 7214.3. Selection Committee for Vending Facilities; Selection Coordinator; Committee Chairperson; Selection Process.

Purpose: The purpose of the added language in section 7214.3 is to make clear that no business plan will be part of the selection interview for DOD vending facilities.

Necessity: This language is needed because, as stated in section 7214.3, the applicant is provided with the opportunity to discuss not just relevant education, experience, and their plan to manage the vending facility, but also their business plan for other non-DOD facility vending selection interviews. As stated previously, the DOD will not look at business plans during the decision-making process. This has prompted objections from vendors who apply for the DOD vending facilities. As a result, it is necessary to make this explicit in the regulation so there is no longer a basis for appeal of the DOD application process regarding business plans. The language makes clear that a business plan will not be considered.

### § 7214.4. Selection Interviews of Applicants.

Purpose: The purpose of the added language in section 7214.4(j)(2) is to make clear that a business plan will not be considered during the scoring for DOD vending facilities contracts.

Necessity: This language is needed because, as stated in section 7214.4, the applicant’s business plan is considered when scoring for vending contracts for other non-DOD facility vending selection scoring. However, the Selection Committee will not look at business plans during the selection process for DOD contracts. This has prompted objections from vendors applying for DOD vending contracts. As a result, it is necessary to make this explicit in the regulation so there is no longer a basis for appeal of the DOD application process regarding business plans. The language makes clear that a business plan will not be considered in the scoring.

**Economic Impact Assessment (Government Code Section 11346.3(b))**

The potential economic impact of the proposed regulations, if any, would be limited only to those vendors who are in the BEP program and apply for a DOD vending facility. The proposed amendments will create neither more nor fewer opportunities for vendors. Instead, the same opportunities will exist, and the same number of vendors will be chosen. The only change pertains to the selection process and the criteria by which vendors are evaluated by the Selection Committee.

The Department concludes that the proposed regulations are:

1. Unlikely to eliminate any jobs or opportunities for licensed vendors in California;
2. Unlikely to create any jobs or opportunities for licensed vendors in California;
3. Unlikely to create any new businesses operated by licensed vendors in California;
4. Unlikely to eliminate any existing businesses operated by licensed vendors in California;
5. Unlikely to affect the expansion of existing licensed vendor business in California.

**Studies, Reports, or Documents Relied Upon (Government Code Section 11346.2(b)(3))**

The Department has relied upon CVPC meeting notes. The following is a list of minutes that are included in the rulemaking file: CVPC Meeting Minutes dated October 14, 2024, CVPC Meeting Minutes November 7, 2024, CVPC Meeting Minutes November 21, 2024, and CVPC Meeting Minutes dated February 6, 2025.

In addition, proposed decisions by the Administrative Law Judges (ALJs) of the OAH influenced the Department to propose this regulatory amendment. The following is a list and summary of proposed decisions issued by the ALJs regarding the business plan requirement in the vendor selection process for DOD facilities, along with the Department’s decisions rendered in each matter. The full texts of the ALJs’ proposed decisions and the Department’s decisions for the matters mentioned below are included in the rulemaking file.

**OAH No. 2020030632**

**Proposed Decision by ALJ summarized:**

The undisputed evidence established that the Performance

Work Statement the Department of Defense included in its five-year

contract with DOR was the [entity’s] business plan. Thus, any applicant’s

business plan submitted pursuant to Regulation section 7214.2 was

essentially irrelevant to the applicant’s operation of the [entity]. BEP acted

reasonably by notifying applicants that the federal contract already

contained the [entity’s] business plan, and by attaching the Performance

Work Statement to the [entity] announcement. BEP exercised sound

discretion by not rigidly adding the business plan requirement in this

instance, as no additional business plan was necessary or useful.” See p. 14 of the decision.

“The evidence did not establish that BEP ‘broke the law.’ Here,

Regulation section 7214.2 conflicted with the federal government’s

interest that the [entity] should be operated as set forth by the

Department of Defense’s own specifications. BEP properly gave priority to

the federal government’s interests pursuant to Welfare and Institutions

Code section 19625, subdivision (b).” See pp. 14-15 of the decision.

**DOR’s Decision:**

“The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of the Department of Rehabilitation as the Decision in the above-entitled matter.” See p. 1 of the decision.

**OAH No.** **2020030617**

**Proposed Decision by ALJ:**

“The regulations, as discussed more fully below, required the candidates for [entity] to be scored by the Selection Committee on five criteria: resume, opening and closing statements, answers to interview questions, and their business plan. However, in contravention of those regulations, the DOR erred in not allowing the candidates to submit their business plans for scoring. The DOR provides no authority permitting the Selection Committee to omit business plans from the scoring criteria, even if the primary contract covered all aspects of the business plan. Appellant provided sufficient evidence to grant his appeal of the 2020 selection process for [entity].” See p. 13 of the decision.

“…the Selection Committee for [entity] failed to score applicants on a business plan, as required by California Code of Regulations, title 9, sections 72124.2, subdivision (a), 7214.4, subdivision (j). BEP’s 2020 selection process for [entity] did not comply with applicable regulations. Therefore, appellant’s appeal of the 2020 selection process for [entity] is granted, as it is not possible to determine whether the most qualified candidate was selected.” See pp. 16-17 of the decision.

**OAH No. 2020030617.1**

**Proposed Decision by ALJ After Remand:**

“…the primary contract did not include all elements of the business plan outlined in California Code of Regulations, title 9, section 7214.2, subdivision (a)(2). The requirements of a business plan included a description of the business, vision and mission statements, as well as any other relevant matters that demonstrate how the vendor envisions the business will function. Those business plan sections are specific to the vendor’s business and are not found in the primary contract. The failure to do so was an error by DOR.” See p. 19 of the decision.

“…appellant met his burden of establishing the primary contract did not cover all elements of the business plan. DOR failed to comply with applicable regulations when it used its discretion in not accepting and scoring business plans in this vendor selection process. Appellant provided sufficient evidence to grant his appeal of the 2020 selection process for Presidio.” See p. 20 of the decision.

**DOR’s Decision:**

“In light of the detailed and legally binding nature of the primary contract, it was reasonable for DOR to have the primary contract serve as the business plan for the selection process. Any deviation in the plan to operate the vending facility at [entity] without written consent of the [entity] military contracting officer or contract amendment may be determined by the Department of Defense as a breach of contract, placing the Department at risk…Furthermore, it would be futile for the vendors to submit a copy of the primary contract with their application for the facility, and it would be futile for evaluators to score the primary contract as the business plan. Failure to exactly replicate, reflect, or mirror the primary contract in the business plan would have proved a fatal error for applicants in the selection process.” See pp. 7-8 of the decision.

“…this decision is consistent with the Department’s earlier decision regarding the [entity] facility vendor selection process, adopting the proposed decision in its entirety in the matter of the Appeal of [appellant] (OAH Case Number 2020030632). In that case, it was found to be a proper exercise of discretion not to require vendors to submit a business plan that was not necessary or useful because the existing legally binding primary contract included all the elements of a business plan identified in California Code of Regulations, title 9, section 7214.2(a)(2)—business, vision and mission statements, plans for staffing and operating the facility, hours of operation, proposed menu and items for sale, and other relevant matters that demonstrate how the business will function.” See pp. 8-9 of the decision.

**OAH No.** **2024060202**

**Proposed Decision by ALJ:**

“The plain language of its regulations requires each applicant to submit, and the Department to consider, the applicant’s business plan. (Cal. Code Regs., tit. 9, §§ 7214.2, subd. (a), 7214.4, subd. (j).) The regulations do not include any exceptions for DOD facilities. The Department’s interpretation of the regulations as allowing it to not accept or consider applicants’ business plans regarding DOD facilities is inconsistent with the plain language of the regulations, and is for this reason erroneous.” See pp. 12-13 of the decision.

“Based on the Factual Findings and Legal Conclusions as a whole, the Department did not comply with the applicable regulations when it failed to accept and consider appellant’s business plan.” See p. 14 of the decision.

**DOR’s Decision:**

“DOR’s interpretation and application of the regulations governing the selection process is both reasonable and practical as described above.” See p. 5 of the decision.

“It is a proper exercise of discretion not to require vendors to submit a business plan that will not be necessary or useful because the performance work statement of the federal contract will include all the elements of a business plan identified in California Code of Regulations, title 9, section 7214.2(a)(2)—business, vision and mission statements, plans for staffing and operating the facility, hours of operation, proposed menu and items for sale, and other relevant matters that demonstrate how the business will function.” See p. 5 of the decision.

**Reasonable Alternatives Considered or Agency’s Reasons for Rejecting Those Alternatives (Government Code Section 11346.2(b)(5)(A))**

The Department considered the alternative of eliminating the use of business plans from the entire BEP selection process, not just DOD contacts.

At the CVPC Meeting held on February 6, 2025, a member of District 6 moved for a motion that the CVPC approve the exclusion of business plan requirements from the entire vendor selection process, not just for DOD facilities. This motion was passed by the majority. The Department formally rejected the motion. After considerate analysis, the Department determined that a business plan remains a valuable tool for vendors participating in the selection process for non-DOD vending facilities, as it provides a clear and concise description of the business and a roadmap of its operations for the Selection Committee. The vendor uses the plan once selected, and operates the facility accordingly, evaluating the ongoing operations as it goes. Having a business plan to refer to allows the vendor to make timely adjustments to improve service and profits. Unlike vending contracts with DOD, which specify extensive requirements and operational details mandated by the military, vendors operating non-DOD vending facilities via permits have the flexibility to determine their own business operations and structure their services according to their individualized business plans. The Department’s position is to exclude the business plan requirement solely for DOD facilities in line with the DOD contract for services but not for all vending facilities.

**Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business (Government Code Section 11346.2(b)(5)(B))**

No reasonable alternatives to the proposed amendments would lessen any adverse impact on small businesses because the minor change in these regulations has no impact on small business at all. The proposed amendment merely eliminates one application requirement of the vendor selection process in a specific setting, DOD contracts only. The vendor selection will still be ongoing and vendor contracts will be awarded.

**Evidence Relied Upon to Support the Initial Determination that the Regulation Will Not Have a Significant Adverse Economic Impact on Business (Government Code 11346.2(b)(6))**

The Department’s objective in proposing these amendments is to make changes to the application requirements for DOD vending facility contracts. These changes will not have an adverse impact on vendor-owned small businesses or any businesses in California.