

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
State Board of Education**
(DLS Control No. 15-027)

Overview and Legal and Fiscal Impact

These regulations (1) amend existing regulations regarding the Business Enterprise Program for the Blind to make various stylistic, technical, and clarifying changes throughout the chapter; and (2) require that the Operating Agreement in the Administrative Manual for the Program be developed with the Committee of Blind Vendors.

These regulations provide a legal issue of concern that the State Board of Education has agreed to address. Please see the Legal Issue and Special Notes sections of the Legal Analysis below for additional comments.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

State Board of Education:

Programs for Adults with Disabilities: Business Enterprise Program for the Blind:
COMAR 13A.11.04.02, .04, .06–.08, .10–.18, .20, and .21

Legal Analysis

Summary of Regulations

These regulations amend existing regulations regarding the Business Enterprise Program for the Blind. More specifically, the following changes are made:

- Regulations 04, .10, .17, .19, and .21 are amended by making only technical, stylistic, and conforming changes, though these types of changes are included in all of the remaining regulations referenced below;
- Regulation .02 defines certain terms and makes minor changes to existing definitions, including repealing “tobacco products” from the list of items that are authorized for sale in a vending facility;
- Regulation .06 (1) requires the Division of Rehabilitative Services to rank all licensed blind persons awaiting assignment to a vending facility in the order in which they were licensed or accrued seniority, as applicable; (2) requires that an opportunity for a specified meeting be provided if the division does not assign the most senior applicant for

the vending facility; and (3) makes changes to the Committee of Blind Vendors announcement and review and recommendation process;

- Regulation .07 requires an Operating Agreement to be developed with the active participation of the committee and to be included in the Administrative Manual;
- Regulation .08 (1) increases from 30 calendar days to 45 calendar days the time within which a vendor vacating a facility is required to provide specified information regarding the inventory of the vending facility to the division or be subject to a penalty set forth in the Administrative Manual; and (2) increases from 30 calendar days to 45 calendar days the time within which a manager of a vending facility that has accepted an existing vending facility has to review and dispute any discrepancies in the vending facility inventory;
- Regulation .11 clarifies the purposes for which vending machine income that accrues to a vendor operating a vending machine in a vending facility shall be used;
- Regulation .12 repeals a provision that established a penalty for a vendor who voluntarily resigns from a vending facility without good cause;
- Regulation .13 (1) requires that a request for administrative review of specified actions be filed by a vendor within 15 calendar days of the action; (2) requires the Director of the Office of Blindness and Vision Services and the vendor to set a date for an administrative review conference that is within 15 calendar days of the date a written request for review is received; (3) authorizes the Assistant Superintendent to transfer an appeal to the Office of Administrative Hearings; and (4) requires the Assistant Superintendent to include with a final decision information on the right to file a complaint with the Secretary of the U.S. Department of Education;
- Regulation .14 establishes a penalty for the failure of a licensed vendor to attend the required bi-annual meeting;
- Regulation .15 (1) repeals the requirement that the division submit a copy of the certified annual audit of the program to the committee and provide the committee with an opportunity to review the audit; and (2) requires that a financial audit of the program be conducted annually;
- Regulation .16 repeals the requirement that the division provide each vendor with an explanation of the vendor's right to judicial review; and
- Regulation .20 repeals the boilerplate language of the Operating Agreement in the Administrative Manual for the program.

Legal Issue

The State board proposes amending Regulation 13A.11.04.02B(26) "vending facility" to, in relevant part, repeal the authorized sale of tobacco products in a vending facility. Title 34, Part 395 of the Code of Federal Regulations, the federal regulations under which the program is

required to operate in conformance, and § 14-109 of the State Finance and Procurement Article, both define the term “vending facility” to include tobacco products as permissible sale items. It is the opinion of the Department of Legislative Services that this term cannot be changed by regulation to be inconsistent with the existing federal and State law.

Statutory Authority and Legislative Intent

The State board cites § 14-109 of the State Finance and Procurement Article and §§ 21-301 through 21-303 of the Education Article as statutory authority for these proposed regulations.

Section 14-109 of the State Finance and Procurement Article establishes the Maryland Business Enterprise Program for the Blind in the division and gives the program priority to operate a vending facility on property controlled by the Department of General Services. The division and the Department of General Services are required to adopt regulations for the operation and maintenance of a vending facility by the Program.

More specifically, § 21-304(c) of the Education Article (1) requires the State Department of Education to license vending facility managers that operate in federal buildings in the State in accordance with federal acts and to license blind persons to manage vending facilities in all State, county, and municipal buildings, and in all privately owned buildings and premises in the State if there is a contract with those persons; and (2) establishes that the division is the licensing agency for all vending facilities within the State that are licensed under the subtitle.

This authority is correct and complete. These regulations comply with the legislative intent of the law.

Special Notes

In response to the legal issue raised by the Department of Legislative Services, the State board has agreed to maintain the authority to sell tobacco products in a vending facility under Regulation 13A.11.04.02B(26). This will keep the definition in conformance with both State and federal law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The Maryland State Department of Education advises that the regulations are technical in nature and conform State regulations to federal requirements. The regulations are not more restrictive or stringent than federal standards. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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