

MARYLAND REGISTER

Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

Name: Charlene L Necessary
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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

COMAR Codification: 13A.11.04.02, .04, .06—.08, .10—.18, .20 and .21

Corresponding Federal Standard:

34 CFR 395

Discussion/Justification:

These amended regulations are technical updates to assure consistency with federal regulations.

TO BE COMPLETED BY DBED

- Agree

-Disagree

Comments:

DBED does not have expertise in this matter and but believes the MSDE does and as such believes their assertion that the regulations are not more restrictive or stringent than corresponding federal standards.

Name: Sandy Popp

Date: 3/11/2015

-Submit to Governor's Office

Governor's Office Response

Comments:

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 5/1/2015

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
13A	11	04	02, .04, .06—.08, .10—.18, .20 and .21

3. Name of Promulgating Authority

Maryland State Department of Education

4. Name of Regulations Coordinator Charlene L Necessary	Telephone Number 410-767-0467
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Title 13A A STATE BOARD OF EDUCATION

Subtitle 11 PROGRAMS FOR ADULTS WITH DISABILITIES

13A.11.04 Business Enterprise Program for the Blind

Authority: State Finance and Procurement Article, §14-109, Education Article, §§21-301—21-303, Annotated Code of Maryland; Federal Regulatory Reference: 34 CFR 395

Notice of Proposed Action

□

The Maryland State Board of Education proposes to amend Regulations .02, .04, .06—.08, .10—.18, .20 and .21 under COMAR 13A.11.04 Business Enterprise Program for the Blind.

This action was considered during the Maryland State Board of Education meeting on February 24, 2015.

5. Name of Person to Call About this Document
Suzanne Page

Telephone No.
410-554-9385

Email Address
suzanne.page@maryland.gov

6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: December 1, 2014.
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md.
R
(vol.) (issue) (page (date)
nos)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Statement of Purpose

The purpose of this action is to be consistent with 20 U.S.C. §107 et. seq., 34 C.F.R. §395, State Finance and Procurement Article §14-109, COMAR 21.11.09, and current vending business practices.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:
The Maryland Business Enterprise Program

_ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Elliott L. Schoen, Assistant Attorney General, (telephone #410-576-6465) on February 27, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Lillian M. Lowery, Ed.D.

Title

State Superintendent of Schools

Telephone No.

410-767-0467

Date

February 24, 2015

provides business opportunities for individuals who are legally blind on federal and state properties. This proposed action establishes a time frame within which a BEP vendor may request an administrative review of a decision of the program.

Opportunity for Public Comment

Comments may be sent to Suzanne Page, Assistant State Superintendent, Maryland State Department of Education, Division of Rehabilitation Services, 2301 Argonne Drive, Baltimore, Maryland 21218, or call 410-554-9385(TTY:443-798-2840), or email to dors@maryland.gov, or fax to 410-554-9384. Comments will be accepted through June 1, 2015. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on June 23, 2015, 9:00 a.m., at 200 West

Baltimore Street,
Baltimore, Maryland
21201.

**Economic Impact
Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Program is funded through special funds.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These amended regulations are technical updates to assure consistency with federal regulations.

F. If these regulations have minimal or no economic impact on small businesses under

Part B, indicate the reason and attach small business worksheet.

These amended regulations are technical updates to assure consistency with federal regulations. Therefore, this regulatory change has no impact on small business.

G. Small Business Worksheet:

Attached Document:

Title 13A STATE BOARD OF EDUCATION

Subtitle 11 PROGRAMS FOR ADULTS WITH DISABILITIES

Chapter 04 Business Enterprise Program for the Blind

Authority: State Finance and Procurement Article, §14-109; Education Article, §§21-301—21-303; Annotated Code of Maryland

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1)—(5) (text unchanged)

(6) “*Cost of Goods*” means the inventory cost of the products sold.

(7) “*Combined Facility*” means a facility that is unable to effectively operate independently without the support of a Primary Facility for purposes of inventory replenishment, storage, and other factors. Criteria for the establishment of a “*Combined Facility*” will be detailed in the Specific Criteria section of the facility bid sheet of the Administrative Manual.

[(6)](8)—[(7)](9)

(10) “*Licensed blind vendor*” means a blind person who has been licensed by the Division to operate a vending facility on federal, State, or other property.

[(8)](11) (text unchanged)

[(9)](12)—[(15)](18) (text unchanged)

[(16)](19) “*Program funds*” means income available in accordance with [Regulation .08] these regulations to pay for program expenses.

[(17)](20) “*Property managing agency*” means the agency that owns, manages, or leases any building, land or real property and is responsible for authorizing the establishment of a vending facility on federal, State, county, municipal, or private property.

[(18)](21)—[(19)](22)(text unchanged)

(23) “*Reasonable service and maintenance costs in accordance with customary business practices*” means personnel and repairs costs, including equipment and transportation costs, taxes, overhead and administration costs and vendor profit.

(24) “*Receipts*” means payments made to the program by a commercial vending company which operates services, and maintains vending machines on property controlled by the property managing agency.

[(20)](25)—[(25)](30)

[(26)](31) "Vending facility" means vending machines, cafeterias, snack bars, and other [concession stands] *retail facilities* for the sale of foods, beverages, newspapers, periodicals, confections, [tobacco products,] and other merchandise including the sale or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

(32) "*Vending machine*" means a currency-operated machine that dispenses products or services.

[(27)](33) "Vending machine income" means receipts, [(other than those of a blind vendor)], from vending machine operations on [federal, State, county, municipal or private] property *controlled by the property managing agency* after deducting the costs of goods sold, [(including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns)].

[(28)](34) (text unchanged)

.04 Training.

A. Establishment.

(1) The Division with the active participation of the Committee shall develop training, retraining, and upward mobility programs for blind persons who are vendors or potential vendors.

(2) The Division shall ensure that effective programs of vocational and other training services are provided to blind persons as vocational rehabilitation services under the Rehabilitation Act of 1973, as amended.

B. (text unchanged)

C. Training for Potential Vendors.

(1) (text unchanged)

(2) *Classes.*

(a) Trainees shall complete standardized classes and on-the-job training in accordance with procedures established in the Administrative Manual.

(b) Training shall be flexible enough to terminate training in a particular area once the trainee has demonstrated mastery of the area.

(c) Trainees may be given additional training in areas of deficiency.

(3) *Training Standards.*

(a) The Division with the active participation of the Committee shall establish and maintain standards to be met by trainees for entry into the training program, and for satisfactory completion of the training program.

(b) The Division shall certify as qualified to operate a vending facility all trainees who have met the standards.

(4)—(5) (text unchanged)

D. (text unchanged)

E. [Inservice] *In-Service Training.*

(1) The Division and the Committee shall jointly sponsor and establish a specific agenda, time, and place for an [inservice] *in-service* training conference for all vendors and licensed blind persons on the Ready-For-Assignment List.

(2) Funding for the conference shall be in accordance with funds budgeted by the Division and Committee for this purpose in the annual budget for the program. Conferences shall be designed to provide those attending with up-to-date information concerning developments and procedures within the program, changes in applicable laws, merchandising techniques, and such other matters as the Committee and the Division may determine to be desirable.

.06 Assignment of Vendors.

A. Ready-for-Assignment List.

(1) The Division with the active participation of the Committee shall establish and maintain a Ready-for-Assignment List of all licensed blind persons awaiting assignment to a vending facility by ranking the persons in the order in which they were licensed *or accrued seniority, whichever applies.*

(2) (text unchanged)

B. (text unchanged)

C. Assignment Procedures.

(1) (text unchanged)

(2) If a property managing agency relocates an existing vending facility *within the building or to a new building*, the Division shall reassign the vendor who was assigned to the existing vending facility to the new vending facility unless the property managing agency or the Division shows cause why the reassignment should not take place.

(3)—(4) (text unchanged)

D. Assignment Criteria.

(1) (text unchanged)

(2) The Division shall assign applicants to vending facilities based on qualifications, described in §D(1) of this regulation, and seniority unless the Division or the Committee can show that the senior applicant does not qualify based on the assignment criteria.

(3) If the most senior applicant does not qualify for the vending facility, the Division shall assign the next most senior applicant who qualifies to the vending facility *subject to the opportunity for the meeting described in §E(2) of this regulation.*

E. Assignment Procedures.

(1) *Announcement.*

(a) The Division shall send announcements, including pertinent data defined in the Administrative Manual of all vending facilities not subject to assignment under §C of this regulation, by *email and* first class mail to all licensed vendors, including those holding provisional licenses.

(b) The announcements shall contain a statement of the assignment criteria under §D which an applicant shall meet in order to qualify for assignment on the basis of seniority and the due date for responses.

(2) *Evaluation.*

(a) After the due date for responses, the Division shall submit to the Committee Chair the name of the applicant recommended for the assignment.

(b) If the recommended applicant is not the most senior applicant, the Division shall also submit to the Committee Chair a report identifying any applicants with more seniority and the reasons for finding the applicants unqualified.

(c) The Division shall also notify the applicant who is found unqualified of the reasons for the finding and the applicant's right to appear before the Committee to present information supporting qualifications for the assignment.

(3) *Committee Meeting.* Upon receipt of the Division's recommendation, the Committee shall schedule a meeting with the Division and the applicant found unqualified if the applicant wishes to show that the applicant is qualified.

(4) *Committee Review and Recommendation.*

(a) The Committee shall agree or disagree with the Division's recommendation, *or make its own recommendation* within 7 [calendar] *business* days after receipt of the recommendation, unless the time is extended by mutual agreement.

(b) If the Committee does not respond within this period, *in writing*, the Division's recommendation shall be effective.

(c) If the Committee disagrees with the Division's recommendation, the Division and the Committee shall hold a conference to resolve the disagreement.

(d) If the Division and the Committee do not resolve the disagreement, the Division's recommendation shall be effective. An aggrieved applicant may appeal under Regulation .13 of this chapter.

F. (text unchanged)

.07 Operating Agreement.

A. *An Operating Agreement shall be developed with the active participation of the Committee of Blind Vendors and shall be made part of the Administrative Manual.*

[A.] B. Terms.

(1) The Division and the vendor shall enter into an Operating Agreement [(Regulation .20)] each time a vendor is assigned to a vending facility.

(2) The Operating Agreement shall be effective on the first day that the vendor is required to be on the location and signed by the Division and the vendor.

(3) On the effective date of the Operating Agreement, the Division shall provide the vendor a complete inventory of all equipment, a list of saleable merchandise, and petty cash provided by the Division.

(4) The Division shall provide the vendor the current value of all saleable merchandise and determine any financial obligations as described in the Administrative Manual.

(5) Payment shall be made as provided in the Administrative Manual.

[B.] C. Period for Operating Agreement.

(1)—(3) (text unchanged)

(4) *Termination.*

(a) The Division shall ensure that the termination of any permit or contract with the property managing agency is in compliance with applicable [federal and State] laws and regulations.

(b) In the event of termination of the permit or contract with the property managing agency, the Division shall notify the vendor in advance and afford the vendor an opportunity for an administrative review before the proposed termination of the agreement.

.08 Vending Facility Equipment and Merchandise.

A. Vending Facility Equipment.

(1)—(5) (text unchanged)

B. *Initial Merchandise and Petty Cash.*

(1) The Division shall furnish each vending facility with adequate, suitable initial stock of merchandise and petty cash sufficient for the establishment and operation of the vending facility.

(2) The vendor shall maintain an inventory of saleable merchandise equal to or exceeding the value of the initial stock of merchandise furnished by the Division or the cash equivalent.

(3) The initial petty cash provided by the Division and the stock of merchandise remains the property of the Division.

[(2)] (4) When a vendor vacates a vending facility:

(a)—(b) (text unchanged)

(c) Within [30] 45 calendar days after the vendor vacates the vending facility, the vendor shall provide to the Division the current wholesale value of saleable merchandise contained in the inventory on the vending facility;

(d) If the vendor fails to comply with this provision, the vendor shall pay a penalty [of \$20 per day which shall be deducted from the value of the inventory at the time of settlement] *as set forth in the Administrative Manual*;

(e)—(g) (text unchanged)

[(3)] (5) (text unchanged)

[(4)] (6) When a vendor accepts an existing vending facility:

(a) (text unchanged)

(b) The manager shall have [30] 45 calendar days to review and dispute any discrepancies; otherwise, the inventory value is accepted as correct.

C. (text unchanged)

.10 Set-Aside Charges.

A. Determination and Use of Set-Aside Charges. *On or before June 1 of each fiscal year, [T]the Division with the active participation of the Committee shall [on or before June 1 of each fiscal year] determine the extent, if any, to which funds shall be set aside from the net proceeds of each vending facility during the [ensuing] following State budget year.*

B. [The Division shall publish and submit the schedule of set-aside charges to the Commissioner of the Rehabilitation Services Administration, United States Department of Education for approval.] If the Division and the Committee determine that set-aside charges shall be assessed, [the charges may only be used in the extent necessary to achieve the following purposes:] *the Division shall publish and submit the schedule of set-aside charges to the Commissioner of the Rehabilitation Services Administration, United States Department of Education for approval.*

C. *Set-Aside charges may only be used in the extent necessary to achieve the following purposes:*

(1)—(3) (text unchanged)

(4) Establishment and maintenance of a retirement and health insurance plan and provision of paid sick leave and vacation time, if a majority of *licensed* vendors in the State *holding an Operating Agreement*, after having been provided full program and financial information on the benefits, determine that the benefits be provided.

[B.] D. (text unchanged)

[C.] E. Schedule of Payments.

(1) Vendors shall pay set-aside charges in accordance with a schedule determined annually by the Division with the active participation of the Committee.

(2) If a vendor fails, without good cause, to pay set-aside charges in accordance with the established schedule, the Division shall assess penalties as outlined in the Administrative Manual.

(3) If the vendor fails to pay the set-aside charges and accumulated penalties, if any, the Division may elect to use vending machine income due the vendor as payment.

(4) The vendor is not eligible for transfer to another facility until the set-aside charges are paid.

(5) As a final recourse, the Division may suspend the vendor's Operating Agreement, or terminate the vendor's license in accordance with Regulation .12 of this chapter.

[D.] F. (text unchanged)

.11 Vending Machine Income.

A. Distribution of *Assigned* Vending Machine Income.

(1) The Division shall remit monthly, if available, or otherwise quarterly vending machine income which accrues from vending machines on federal, State, *local*, or private property to the vendor operating a vending facility on the property in accordance with 34 CFR 395.32.

(2) Vending machine income remitted to a vendor shall be reported separately from gross sales and shall be included in calculating the net proceeds of the vending facility.

B. Limitations on Vending Machine Income.

(1) A vendor is entitled to vending machine income not to exceed the [State or] national average income of blind vendors for the previous year[, whichever is less].

(2) Limitations may not be imposed on income from vending machines when the machines are maintained, serviced, and operated by a vendor within the confines of the vending facility.

(3) Vending machines may not be maintained, serviced, and operated by a vendor unless authorized by the Division.

C. Use of *Unassigned* Vending Machine Income.

(1) Vending machine income *that does not accrue to a vendor in accordance with §11A(1) of this regulation* from federal, State, *local* or private properties [in excess of the amount remitted to the vendors] shall be used for:

(a) *Establishment and maintenance of retirement or pension plans, for health insurance contributions if so determined by a majority licensed vendors holding an operating agreement.*

[(a)](b)—[(c)](d) (text unchanged)

(2) Any vending machine income from federal property not used for the purposes authorized in §C(1) of this regulation shall be used in accordance with [34 CFR §395.9(b)(1)—(4)] 34 CFR §395.8(c) and Regulation [.10A(1)—(4)] .10C(1)—(4) of this chapter.

(3) Set-aside charges, if any, shall be reduced pro-rata in an amount equal to the total of any vending machine income used for [those] the purposes in Regulation .10C(1)—(4) of this chapter.

[(3)](4) (text unchanged)

.12 Resignation, Extended Illness, and Suspension and Termination of Licenses.

A. Resignation.

(1) Notice.

(a) When a vendor resigns from a vending facility or the program, the vendor shall give the Division written notice at least 90 calendar days in advance of the effective date of resignation unless the vendor is reassigned to another vending facility.

(b) The Division may waive this requirement in an emergency.

(c) If a vendor fails to comply with this requirement, the Division may terminate the vendor's license and the vendor shall be disqualified from reapplying for a license for 2 years.

[(2) Voluntary resignation from a vending facility without good cause shall constitute grounds for termination of the vendor's license and the vendor shall be disqualified from reapplying for a license for 2 years.]

[(3)] (2) (text unchanged)

B.—C. (text unchanged)

D. Temporary Removal.

(1) The Division may remove a vendor temporarily from a vending facility in advance of a hearing only under emergency conditions.

(2) The Division shall give the vendor written notice of the temporary removal personally or by certified mail, return receipt requested, stating the reasons for the action and the vendor's right to appeal the action.

(3) The temporary removal shall be effective immediately after receipt of the notice by the vendor.

(4) The vendor's license and the Operating Agreement shall remain in effect during the period of the temporary removal.

(5) If the vendor appeals the action, the vendor shall continue to receive the net proceeds from the vending facility less the cost of substitute personnel until the final decision, resulting from the full evidentiary hearing, issued pursuant to Regulation .13B(12) of this chapter.

.13 Administrative Review, Full Evidentiary Hearing, and Arbitration.

A. Administrative Review.

(1) A vendor who is dissatisfied with any action, or actions, arising from the operation or administration of the program may obtain an administrative review of the action, or actions, by filing a written request *within 15 calendar days of such action* with the Director of the Office for Blindness and Vision Services (OBVS), Division of Rehabilitation Services stating the action, or actions, with which the vendor is dissatisfied and any remedy that the vendor seeks from the Division.

(2) Upon receipt of the written request, the Director of OBVS and the vendor shall determine a suitable date for the administrative review conference which shall be within 15 *calendar* days of the date on which the written request was received. The Director of OBVS shall provide written confirmation of the date, time, and place of the conference to the vendor and the availability of the Committee to assist in the appeal.

(3) Conduct of Administrative Review.

[(3)] (a) The Director of OBVS shall conduct the administrative review conference in an informal manner in order to determine the merits of the dispute.

(b) The vendor may be accompanied to the conference by any person of the vendor's choosing.

(c) The Director of OBVS shall allow the vendor to fully explain the reasons for the request and the nature and type of any remedy that the vendor seeks from the Division.

(d) The conference may be recorded by any means if the parties determine that a recording is needed. If a record is made, the vendor shall be entitled to receive a copy promptly.

(4) Written Decision.

[(4)] (a) After fully exploring the matter at the administrative review conference and considering the views of the vendor, the vendor's representative, and any representative of the Division, the Director of OBVS shall prepare a written determination affirming, reversing, or modifying the action, or actions, reviewed or make any other determination necessary to fully and fairly implement the purposes of the Randolph Sheppard Act and this chapter.

(b) The Director of OBVS shall set forth in the written determination a brief statement of the reasons for the determination.

(c) The Director of OBVS shall deliver or mail the written determination to the vendor and vendor's representative within 15 calendar days from the date of the conference.

(5) (text unchanged)

B. Full Evidentiary Hearing.

(1)—(3) (text unchanged)

(4) The Assistant Superintendent may conduct the hearing or *transfer the appeal to the Office of Administrative Hearings* [appoint a hearing or officer who has not been involved with the subject of the appeal] to conduct the hearing.

(5)—(7) (text unchanged)

(8) *Evidence.*

(a) The hearing officer shall admit into the record all relevant evidence.

(b) The hearing officer may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(c) Documentary evidence may be received in the form of copies unless the hearing officer determines that production of the original document is required to ensure a full and fair hearing.

(9) (text unchanged)

(10) *Ex parte communication.*

(a) The hearing officer and any other Division official or employee authorized to participate in the decisional process, may not communicate outside the presence of the vendor or the vendor's representative with any person not authorized to participate in the decisional process regarding any issue of fact or law in the case.

(b) If the hearing officer or any official or employee involved in the decisional process becomes personally aware of the prohibited communication, that person shall follow the procedures of the State Government Article, §10-213, Annotated Code of Maryland, concerning these communications.

(11) *Written Decision.*

(a) Upon conclusion of the hearing the hearing officer shall issue a written decision.

(b) If the hearing officer is the Assistant Superintendent, the decision shall contain final findings of fact and conclusions of law, separately stated.

(c) If the hearing officer is not the Assistant Superintendent, the decision issued shall contain proposed findings of facts and conclusions of law, separately stated.

(d) The decision shall affirm, modify, or reverse the administrative review determination and shall be delivered or mailed to the vendor and the vendor's authorized representative within 15 calendar days after the conclusion of the hearing.

(12) *Exceptions.*

(a) Upon receipt of a decision containing proposed findings of fact and conclusions of law, the vendor shall have 15 calendar days to file written exceptions to the decision with the Assistant Superintendent.

(b) If written exceptions are filed, the vendor shall state in writing whether the vendor desires to present argument before the Assistant Superintendent on the points of exception.

(c) If a request for argument is timely filed or if the Assistant Superintendent determines that argument would assist in resolving the appeal, the Assistant Superintendent shall schedule the case for argument.

(i) The argument before the Assistant Superintendent shall be limited to oral presentation of reasons for the points of exception.

(ii) New or additional evidence may not be allowed into the record.

(d) After consideration of the exceptions and oral argument, if any, the Assistant Superintendent shall issue the final written decision in the case.

(i) The decision shall affirm, reverse, or modify the hearing officer's decisions.

(ii) The final decision shall be delivered or mailed to the vendor and the vendor's representative within 20 calendar days of receipt of the written exception or oral argument, whichever is later, and implemented promptly.

(13) When a final decision of the Division is issued, the Assistant Superintendent shall include with the decision a written statement of [any further] *the right [of appeal] to file a complaint with the Secretary of the United States Department of Education*, which is available to the vendor under [the State law and the right] *34 CFR 395.13*, to request the Secretary of the United States Department of Education to convene an ad hoc arbitration panel pursuant to federal law.

(14)—(15) (text unchanged)

.14 Committee of Blind Vendors.

A. Biennial Election.

(1) The Division shall convene a meeting of all vendors in [May] *the Spring* of each even-numbered year to elect a Committee of Blind Vendors.

(2)—(3) (text unchanged)

(4) All licensed vendors holding an Operating Agreement are required to attend the bi-annual meeting. [All other licensees, trainees, and other interested parties may attend this meeting. However, only active licensees holding an Operating Agreement may vote.]

(a) *Failure to attend shall result in disciplinary actions as prescribed in Section 23 of the Administrative Manual.*

(b) *All other licensees, trainees, and other interested parties may attend this meeting.*

(c) *Only active licensees holding an Operating Agreement are eligible to vote.*

B. (text unchanged)

C. Functions of the Committee.

(1) The Committee shall perform all functions and obligations imposed on it pursuant to these regulations, the Constitution adopted by the vendors, *the Administrative Manual*, and 34 CFR 395.14.

(2)—(3) (text unchanged)

.15 Access to Program and Financial Information.

A. The Division shall provide vendors with program and financial reports including audits to the extent that the disclosure does not violate the laws pertaining to disclosure of confidential information.

B. The Division shall prepare and submit to the Committee in accordance with time periods specified in the Administrative Manual written annual financial reports.

C. The reports shall set forth revenues received and available from all sources, program expenses, and changes in fund balances for the period covered by the reports. [The Division shall also submit to the Committee in accordance with the time periods specified in the Administrative Manual a copy of the certified annual audit of the program and provide the Committee an opportunity to review the audit findings with the Division.]

D. *Financial Audit.*

(1) *A financial audit of the program will be conducted annually.*

(2) *The scope of the annual audit will be agreed to by the Division and the Committee of Blind Vendors.*

.16 Explanation of Rights and Responsibilities.

A. The Division shall provide each vendor with a copy of this chapter, the Operating Agreement, applicable permits or contracts between the Division and property managing agency, the Administrative Manual, and the Nominee Agreement, *and any other documents relating to the operation of the facility*, if any.

B. The Division with the active participation of the Committee shall also provide in writing to each vendor an explanation of the vendor's rights and responsibilities under the program including the right to an administrative review, a full evidentiary hearing, *and* arbitration[, and judicial review] under Regulation .13 of this chapter, if the vendor is dissatisfied with any action arising from the operation or administration of the program.

C. Each vendor shall acknowledge in writing that the vendor has been supplied with a copy of the documents listed above, and a written explanation of the vendor's rights and responsibilities under the program upon assignment to a vending facility.

.17 Division Responsibilities.

A. (text unchanged)

B. Vending Facilities.

(1) The Division with the active participation of the Committee shall make decisions regarding the opening, closing or consolidating of vending facilities and the number of facilities to be established at any given site in accordance with the Administrative Manual.

(2) The Division shall give preference to expansion of the program, but every effort shall be made to assure that a vendor on the same premises will not be adversely affected by the expansion.

C. (text unchanged)

D. Nominee Agency.

(1) The Division may, with the active participation of the Committee of Blind Vendors, enter into an agreement with a nominee agency to furnish management services.

(2) The Division shall clearly explain in writing any responsibilities that are delegated to a nominee agency.

.18 Administrative Manual.

A. The Division, with the active participation of the Committee, shall develop policies and procedures as required to assure the efficient operation and administration of the program.

B. The policies and procedures shall be contained in an Administrative Manual which shall be binding on both the Division and the vendors.

C. The Division and the Committee shall review the Manual every 3 years.

.20 Operating Agreement.

OPERATING AGREEMENT

THIS AGREEMENT ENTERED INTO THIS ____ DAY OF _____, 20__ BY AND BETWEEN THE MARYLAND STATE DEPARTMENT OF EDUCATION, DIVISION OF REHABILITATION SERVICES (STATE LICENSING AGENCY), HEREINAFTER REFERRED TO AS THE DIVISION, AND _____, LICENSED BY THE DIVISION AS A BLIND VENDOR, HEREINAFTER REFERRED TO AS THE VENDOR, UNDER THE MARYLAND BUSINESS ENTERPRISE PROGRAM FOR THE BLIND.

WITNESSETH

WHEREAS, THE DIVISION HAS BEEN GRANTED A PERMIT OR CONTRACT FOR THE OPERATION OF A VENDING FACILITY BY A LICENSED BLIND VENDOR UNDER THE MARYLAND BUSINESS ENTERPRISE PROGRAM FOR THE BLIND, ON THE PROPERTY LOCATED AT _____

COPY

OF WHICH PERMIT OR CONTRACT IS ATTACHED HERETO AND MADE A PART OF THIS AGREEMENT AND,

WHEREAS, THE DIVISION HAS OFFERED THE VENDOR THE OPPORTUNITY TO OPERATE THE VENDING FACILITY UNDER THE TERMS AND CONDITIONS HEREINAFTER SET FORTH AND,

WHEREAS, THE VENDOR HAS AGREED TO UNDERTAKE THE OPERATION OF THE VENDING FACILITY UNDER THE TERMS AND CONDITIONS HEREINAFTER SET FORTH AND,

WHEREAS, THE PARTIES DO NOT INTEND TO DEROGATE IN ANY WAY THE RESPONSIBILITIES AND RIGHTS IMPOSED AND GRANTED BY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS OR REGULATIONS BY THIS AGREEMENT.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

A. Division Responsibilities.

(1) The Division shall assure that the vending facility is provided with suitable equipment, initial stock and petty cash to provide the goods and services authorized by the permit or contract. The Division and the vendor shall agree in writing when the vendor is assigned what equipment, initial stock, and petty cash is necessary for the operation of the vending facility. If the vendor disagrees with the Division regarding equipment, initial stock or petty cash, the exceptions shall be documented in writing and made a part of this agreement.

(2) The Division shall assure that the equipment at the vending facility is in good repair and working order in accordance with COMAR 13A.11.04 .08A(1).

(3) The Division shall provide the training as appropriate to meet the training needs of the vendors to fulfill vendor responsibilities as set forth in this agreement.

(4) The Division shall furnish to the vendor the current value of all saleable merchandise and determine the extent of any financial obligations. Payment will be made as provided in the Administrative Manual.

(5) The Division shall notify the vendor of any complaints by either customers or the property managing agency. The complaints shall be handled in accordance with §C(4) and (5) of this agreement.

B. Responsibilities of the Vendor.

(1) The vendor shall conduct business at the facility in accordance with the terms and conditions of the permit or contract, the Administrative Manual, COMAR Title 13A, and applicable health regulations.

(2) The vendor will be responsible for having the vending facility open for business on the days and during those hours specified in the permit or contract.

(3) The vendor is expected to be in attendance at the vending facility daily in accordance with those hours normally accepted to constitute a 5-day work week except under the following conditions:

(a) Business related to the operation of the vending facility requires that the vendor be absent;

(b) Activities related to the operation of the Program require that the vendor be absent;

(c) The vendor is on vacation;

(d) The vendor is on sick leave.

(4) If the vendor is absent from the vending facility, the vendor shall:

(a) Adhere to the policies published in the Administrative Manual;

(b) Notify the Division at least 24 hours in advance of taking planned leave for more than two consecutive working days;

(c) Provide and pay for substitute personnel to operate the vending facility; and

(d) Designate an individual who will be in charge of the vending facility with responsibilities in accordance with the terms and conditions of the Administrative Manual, COMAR Title 13A, and applicable health regulations.

(5) The vendor may establish credit accounts as necessary to operate the vending facility provided that the Division is excluded from any liability for these credit accounts.

(6) Any licenses or permits required for the initial establishment of the vending facility shall be paid for as a program expense. The cost for renewal of the licenses and permits shall be charged as a business expense against the vending facility.

(7) The vendor shall:

(a) Operate the vendor's vending facility in accordance with sound business practices and in accordance with applicable State and federal laws;

(b) Retain and manage the proceeds of the vending facility, which may be distributed to suppliers, governmental agencies, insurance carriers, and other firms associated in the course of the operation of the vending facility;

(c) Operate the vending facility in a courteous, efficient, and orderly manner;

(d) Maintain the vending facility in a clean and sanitary condition at all times;

(e) Pay set-aside charges in accordance with COMAR 13A.11.04.10C;

(f) Take proper care of the equipment in the vending facility and obtain approval of the Division before making any alterations to the equipment or facility in accordance with COMAR 13A.11.04.08A;

(g) Be responsible for the hiring, supervision, and dismissal of vending facility employees;

(h) Provide mandatory fringe benefits;

(i) Maintain adequate records to demonstrate compliance with all applicable State and federal laws;

(j) Provide required employee benefits and adequately supervise employees;

(k) Be responsible for establishing and maintaining financial, payroll, personnel, and operational records that may be required by law or under the Division's policies;

(l) Maintain a current sanitation certificate for the operation of a food service establishment where food is prepared on premises, and as required by law; and

(m) Maintain all other applicable federal, State, and municipal licenses.

(8) The vendor shall procure and obtain general liability and food product liability insurance covering all operations:

(a) In the amounts or limits as may be required by the property managing agency or the Division;

(b) By companies acceptable to, and including terms and provisions as required by, the property managing agency or the Division; and

(c) With the property managing agency and the State of Maryland acting by and through the Division as coinsured.

(9) The vendor shall furnish certificates of insurance in at least the required amounts to the coinsured.

(10) The vendor shall file all reports required under Program policies with the Division. Financial reports may be subject to audit in accordance with procedures developed by the Division.

C. General.

(1) The business to be conducted at the vending facility shall be limited to that specified and authorized in the permit or contract.

(2) If the vendor wishes to purchase equipment which has not been provided by the Division or the property managing agency for the operation of the vending facility, the vendor may do so in accordance with Regulations .08A(3) and (4) of this chapter. Upon the termination of this agreement, all equipment owned by the vendor and any cash on hand not provided by the Division shall be removed from the facility or disposed of in accordance with Regulation .08B(2)(a) of this chapter. The right, title, and interest in the equipment, merchandise, and initial petty cash provided by the Division shall be vested in the Division and equipment, merchandise, and initial petty cash shall remain on the vending facility upon termination of this agreement. Within 30 calendar days after completion of the physical inventory, the vendor shall deliver to the Division the current total wholesale value of all saleable merchandise contained in the inventory. The Division shall determine the extent of any financial obligations between the Division and the vendor. Any payments due shall be made in accordance with the Administrative Manual.

(3) The vendor shall retain the net proceeds of the vending facility less set-aside charges, if any.

(4) The Division shall on a timely basis make available in writing to the vendor any substantive complaint regarding the operation of the vending facility or the vendor. Whenever possible, the Division shall refer the individual making the complaint to the vendor. Immediately upon receipt of the complaint, the vendor shall file a written acknowledgement with the Division. Within 30 days after receipt of the complaint, the vendor shall file a written report with the Division outlining the disposition of the complaint. Upon receipt of the report of the disposition of the complaint from the vendor, the Division shall prepare a memorandum outlining its satisfaction or dissatisfaction with the steps taken by the vendor to resolve the complaint and provide a copy to the vendor. The vendor shall have full responsibility for the disposition of customer complaints and the Division shall upon request assist in resolving these complaints.

(5) The Division may take action directly to resolve complaints received from the property managing agency provided that the Division has first used every reasonable means to encourage the property managing agency to resolve the problem or problems giving rise to the complaints with the vendor. In cases of Division intervention, the vendor shall be entitled to participate fully in any discussions or negotiations with the property managing agency to effect the resolution of the complaint. In all cases of complaints which involve the intervention of the Division, the Division shall serve as an advocate for the vendor in its efforts to resolve the complaint. The vendor shall keep a written report of all complaints and make the reports available to the Division upon request in case there is a dispute between the vendor and the property managing agency concerning the operation of a vending facility.

(6) The Division may suspend the license of a vendor under emergency conditions in accordance with the provisions of COMAR 13A.11.04.12C.

(7) This agreement may be terminated at any time with good cause by the vendor provided that 90 calendar days written notice is given by the vendor if the vendor wishes to resign from the facility voluntarily.

(8) Notice is not required by a vendor before terminating this agreement for reasons of reassignment.

(9) This agreement shall be terminated by the Division upon the lawful termination of the permit or contract. The Division shall assure that the termination of any permit or contract is in compliance with applicable federal and State laws and regulations. Upon the receipt of notice of the intent to terminate the permit or contract, the Division shall immediately notify the vendor.

(10) This agreement shall be terminated by the Division if after affording the vendor an opportunity for a full evidentiary hearing as set forth in COMAR 13A.11.04.13B it is determined that the business of the vending facility is not being conducted in accordance with sound business practices, this agreement, the terms and conditions of the permit or contract and any amendments to it, or with applicable State, federal, or local laws and regulations. This agreement shall also be terminated if the vendor's license is terminated.

(11) Changes in the terms of the permit or contract may not be made without the participation of the vendor.

(12) This agreement shall supersede any prior agreement between the Division and the vendor with respect to the operation of a vending facility.]

[.21] 20. Procurement.

The State procurement regulations for the operation of vending facilities on property controlled by the Department of General Services are found in COMAR 21.11.09.

LILLIAN M. LOWERY, Ed.D.
State Superintendent of Schools