
**CALIFORNIA VENDORS
POLICY COMMITTEE
(CVPC)**

**Meeting Minutes
May 16, 2007**

CALIFORNIA VENDORS POLICY COMMITTEE Meeting Minutes

Meeting commenced at 9:10 am, Thursday, May 16th, 2007.
Location: Department of Rehabilitation, Sacramento, California

INTRODUCTION/CELL PHONE CHECK

Chair Hatch began the meeting by stating there was a closed session scheduled at 9:30 am. Only the CVPC delegates, CVPC Executive Secretary, and the Recording Secretary would be in attendance to this special meeting. The closed session (authorized by Government Code 11126) was placed on the agenda to address some of the legal issues that may need legal resolution. The regular CVPC meeting would reconvene at approximately 10:15 am.

Chair Hatch reiterated the rules of participating in the meeting, including requesting that all cell phones be turned off during the meeting.

ROLL CALL

Chair Hatch called the meeting to order at 9:10 am. He began the meeting by taking a roll call of attendees.

The meeting was in compliance with November 1995 Motion 95.212 disclosure requirements for delegates. There were ***nine (9) delegates*** in attendance which satisfied the requirements of a Quorum.

Delegates in Attendance:

District	Delegate	Location
District 1	Tom Evans	Agnes Developmental Center and Main Processing Center (Post Office) in San Jose.
District 2	Joe Murphy	Turlock Roadside Rest Area, Turlock, CA
District 3	Steve Adams	Folsom State Prison, Folsom, CA

District 4	Reese Griffith	Cal Pers Public Retirement System in Sacramento
District 5	Michael Hatch	Concoran State Prison
District 7	Harry Begian	Cal Trans, Los Angeles, California
District 8	Jack Bedikian	Bulk Mail Center – U.S. Post Office in Bell City, California
District 9	David Collins	California Rehabilitation Center in Norco, California
District 10	David Hanlon	Dave’s Snack Bar in Spawar (San Diego)

Absent:

District 6	Jeana Martin-Hanlon	California State Men’s Prison in Lancaster, California
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INTRODUCTION OF STAFF AND GUESTS

John Westbrook – BEP Program Manager

Steve Miller – Assistant BEP Program Manager.

Cheryl Gorss-Huizar – Office Technician for John Westbrook

Janis Friesen - CVPC Executive Secretary

Charles “Buzz” Nunn – Contractor working on the Regulations

Guests and BEP Vendors:

Roy Harmon - BEP vendor that operates a roadside rest area in the Oceanside/San Diego area.

Hazel Harmon – wife of Roy Harmon.

John Friesen – retired BEP vendor

Michael Dowling – BEP vendor

Andy Brown – BEP vendor at the Resources Building

Jim Howie – BEP vendor in Sacramento

Nicole Smith – CVPC Recording Secretary

MINUTES – Recommended Action

Approve the minutes of the CVPC meeting held on December 7, 2006.

MOTION 2006.047. Moved that the committee accept the minutes of the February 15, 2007 California Vendors Policy Committee meeting and the Responses to the motions for the February 15, 2007 as distributed.

Moved: Delegate Griffith
Seconded: Delegate Hanlon
Vote: Passed Unanimously
Absent: Delegate Martin-Hanlon

Reading of the CVPC Motions and BEP Responses of February 15, 2007 Meeting.

EXECUTIVE OFFICERS REPORTS

Report of the Chair

A. Reading of Action Items from the February 17, 2007 CVPC Meeting

Action Item: Mr. Westbrook recommended giving him a list of all the reports required by the CVPC and he will make sure they are forwarded to Mrs. Friesen for distribution. He indicated the Interim Location and Delinquency Reports are available for review and he will forward them to Mrs. Friesen after the meeting.

Status Report: Mr. Westbrook agreed that there have been some issues with getting the required reports to the CVPC. Marty Fay was placed in charge of ensuring all required reports be forwarded to CVPC.

Action Item: Mr. Westbrook understood the

need for particular reports in order to conduct CVPC business and will address the challenges with reporting promptly after the meeting.

Mrs. Friesen confirmed that the Interim Report has not been received. Mr. Westbrook remarked that this information is also in the Profile 1 report which currently lists 26 interim locations still in the program. Mr. Westbrook reaffirmed that a majority of the current interims are under 6 months. There are only 2-3 interim facilities beyond the 6 months operating period.

CVPC will continue to communicate with Mr. Westbrook regarding delayed reports.

Action Item: Mr. Westbrook and Mr. Miller will research the two interim locations in Los Angeles County and why they have not been closed upon the recommendation of the CVPC. Mrs. Friesen remarked that a motion was passed concerning the locations in July 2006

Status Report: Chair Hatch gave an overview of the situation about 4 different BEP locations in Southern California which were being operated far beyond the 6-month operating period without any fee being paid to the program. The CVPC recommended that unless the County of LA agreed to subsidize the BEP locations to keep them operating, these locations were advised to be closed. The DOR agreed with the CVPC's recommendation. To date, all four locations are still in operation.

According to the Profile 1 report, one interim facility has been added to a vendor's primary location (Juvenile Courts – Location: 256).

Mr. Westbrook confirmed that one location is in the process of being closed and the notice of closure has been submitted to LA County.

David Norris has been working with the vendor during the closure transition.

For one of the facilities, a location announcement will be distributed to all vendors with the option of adding the interim facility to a primary location. Mr. Westbrook confirmed that sending a location notification to all vendors is the standard practice for handling long-term interim operations. It allows all interested vendors an opportunity to apply for the location.

Mr. Westbrook indicated that when a location announcement is sent out for facilities generating over \$2K a month in net income, the DOR receives applications requesting the location to be a "primary facility".

Chair Hatch gave an overview of the current process for location announcements.. If a location generated more than \$2K a month, a vendor can **only** apply for the location as a primary location. If the facility generates **less than \$2K**, then a vendor can apply for a location as a primary or add it to their existing business enterprise. If a vendor applies for a location as a primary facility, his or her application will take precedence or have priority over the applications requesting the location to be added on or as a satellite.

If no one bids for the location as a primary and it generates more than \$2K in net income, then the announcement is resent and the process to retain interested vendors is started over again. The argument was to leave both options open in the announcement regardless of how much the location generates.

The delegates agreed that having both options available when applying for a facility would streamline the process, save time and make it more efficient in finding interested vendors for

some of the lower producing facilities. The CVPC believes there should be no restrictions. The goal is to retain as many viable, income producing locations in the program that can also pay fees.

Delegate Murphy mentioned that building management may not be too pleased if the announcement has to be recirculated which can cause additional delays to having a vendor in place at the location.

Chair Hatch requested that Mr. Westbrook highly considers the arguments presented on this topic and review the process. If there are changes, the CVPC is in full support.

CVPC CLOSED SESSION MEETING – 9:30 am

Chair Hatch announced the closed session meeting and that the open session will reconvene at about 10:30 am. The CVPC needed to resolve and get agreement on some legal issues. After the closed session the CVPC, DOR staff and guests reconvened at about 10:30 pm.

John Westbrook introduced the new Office Technician for BEP, Cheryl Gorss-Huizar and has been in her new role for the two months.

COMMITTEE REPORTS

The DOR requested the assistance of Charles Nunn to work solely on facilitating, updating and revising the Regulations. He is the lead person responsible for coordinating the project.

Charles Nunn remarked that these Regulations will be very extensive and the primary goal is to also include Regulations that address issues that have been overlooked in the past. His approach in getting the Regulations completed was to make sure all parties were involved and have an equal say. A draft of the Regulations has been

completed and was ready for the first reading by the CVPC. After the Regulations have undergone an internal review and have been approved by the CVPC, BEP, DOR Legal and Contracts, the Regulations will be forwarded and reviewed by the Department of Health And Human Services. From there, it will undergo an intensive, comprehensive review by the Office of Administrative Law which will approve its enactment. After the OAL, the regulations will go to the federal government to ensure consistency to the spirit of the Randolph-Sheppard Act and for incorporation into law. Because of the process, Mr. Nunn commented that it is hard to give an estimated timeframe of completion. It will be a long time before the use of the Regulations as a regulatory document.

Chair Hatch added that the last revision of the Regulations was in 1993. He also warned that the Regulations will not be perfect and that not “everyone is going to be in complete agreement”. Each group or party involved will have their own perspective on a particular section of the Regulations. His goal is to have the Regulations enacted and not wait another 14 years before they are reviewed again. Future revisions of the Regulations should be on a consistent schedule (i.e. every 3 years) and the process is expected to be easier as time goes on.

Mr. Nunn confirmed that he has submitted a copy of the Regulations to Mr. Westbrook and Mr. Candela for review and has been working with DOR staff on the project for their input.

Mr. Nunn did feel that the definitions should be back in the Regulations. The definitions have been quite expansive and should be reduced without affecting the intent of the Regulations. All the changes that were requested by Legal have been incorporated into the Regulation’s package.

Delegate Hanlon remarked the intent of the Regulations was to increase accountability on the part of the program and the vendors. Overall, he agreed with about 98% of the proposed Regulations.

Mr. Miller also clarified that there are two different review processes taken place internally. The DOR legal department is reviewing the Regulations for technical and legal content whereas the CVPC is reviewing them from a content perspective, ensuring that the interests of the vendors are upheld.

Chair Hatch reiterated that the Regulations need to be enacted and not all parties will be 100% in complete agreement. Mr. Nunn responded that the CVPC can re-review the package before it is submitted to the agency. He also added that there are several vendors who have dedicated their time to work on the Regulations over the years and have also reviewed them very critically. He will consider all comments from vendors and will make any changes, if necessary, to ensure consistency with the interests of the vendor community.

Mr. Friesen gave an overview of the review process. After the Regulations have been submitted to the Office of Administrative Law, a hearing will be scheduled. The hearing is open to all interested vendors. Vendors (or any interested parties) have 45 days from the hearing to submit any concerns. The final copy is then submitted to the Rehabilitation Services Administration in Washington D.C. for final approval. After this approval, the Regulations are then enacted into law.

RULES — Delegate Hanlon

Janis Friesen read each section of the proposed Regulations.

A. Discussion of the Proposed Rules and Regulations

Article 1. General Provisions § 7210 General Provisions (b) (2)

Delegate Begian's concern regarding this section was the wording "proposed" versus using "adopted". Mr. Nunn mentioned that the purpose is to give advance notice to all vendors of any changes to the Regulations. Before proceeding with any proposed changes, they will have to notify vendors giving them an opportunity to review and submit comments.

All delegates were in agreement with the wording of this section.

Article 2. Definitions and Terms

§ 7211 Definitions (2) (A) Mrs. Friesen read Delegate Adams comments:

"Pursuant to the **W & I Code Section 19631**, the DOR has established a minimum projected net income of \$3200 per month for

the purpose of establishing and placing a licensee or vendor in a newly established vending facility. That minimum should be adjusted annually and accordance with the **W & I Code Section 19631 (b)** by using the cost of living separate indices for Los Angeles and San Francisco and as published by the United States Bureau of Labor Statistics. If the minimum projected monthly net income is less than \$3200 it may be announced as a new combined or consolidated vending facility or it may announced as available for vendors to add their existing vending facility as a satellite.”

The **W & I Code Section 19631** states that the “DOR shall not cause or permit the establishment or placement of any blind vendor in a vending facility unless the Director in consultation with the committee of license blind vendors first determine that the facility produces or is likely to produce within a reasonable time an adequate net income for a blind vendor. Nothing in this article prohibits the entity or person controlling in which a vending facility is located from making to the blind operator operating it payments in supplementation of proceeds realized from sales.”

Mr. Nunn will review past Regulations to see if there is any mention of the cost of living indices. He did not delete this information from the Regulations. Mrs. Friesen read Delegate Adams’s letter to the committee:

“Prior to establishing a vending facility on any federal, state or other property the DOR should first determine that the vending facility will provide the vendor with a minimum net of \$2000 per month. The DOR shall annually review this minimum income level and make adjustments based upon the changes in a California Necessity Index. W & I Code: 2716 (A).”

The subcommittee raised the income minimum for a **new** BEP location to be \$3200 per month. Delegate Adams suggested reviewing **all** the locations in the program to ensure all locations are meeting the monthly net income minimum of \$3200.

\$2200 net income is the set amount required to start paying fee to the program. The subcommittee felt that \$2200 was an appropriate threshold where a vendor could pay fees. It was also discussion that if an interim location consistently generated less than \$2200 in net income, the location could be recirculated to find an interested

vendor to add it to their existing enterprise or be in jeopardy of possible closure as the last resort. Mr. Friesen did indicate that this threshold is reviewed every year to comply with current income indices levels. Fees are based upon 6% of the gross income. Another question that arose is a location that is generating \$2200 net income paying enough into the fund to support its operating expenses?

Delegate Adams suggested that instead of closing locations, the location should be modified or downgraded or added to an existing enterprise. Mr. Westbrook responded that the program tries its best to retain locations that will provide sufficient income for a vendor. The vendors who are new to the program often secure these lower income producing facilities as they increase their experience in the program.

Delegate Adams remarked that the average net proceeds for a snack bar in 2005-2006 was \$2962, subtract program fees at \$906, leaving the vendor with a net income \$2056.

An opinion poll was taken on the issue of applying the standard net income of \$3200 to all facilities, new and existing.

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| Delegate Evans | Opposed new criteria. The existing language is sufficient. He prefers to add lower income producing locations to an existing enterprise rather than closure. |
| Delegate Murphy | Opposed new criteria. He expressed his concern regarding the financial impact to vendor and program if the threshold is changed. |
| Delegate Adams | Supports the new language. His goal is to help all vendors earn a respectable living. |
| Delegate Griffith | Oppose new criteria. He would like to keep the existing language but have this issue reviewed in the next 3 years. |
| Delegate Begian | Supports the new criteria of \$3200. this new threshold could help prevent vendors from leaving their locations. |
| Delegate Bedikian | Supports the new criteria of \$3200 after fee. |
| Delegate Collins | Opposes new criteria. Keep existing language. |

Delegate Hanlon **Opposes new criteria.** Keeping existing language. There is no clear or aggressive strategy on the part of the DOR to procure new locations into the program. Review in 3 years.

There was a majority decision to keep the existing language in the Regulations as proposed.

Action Item: Mr. Nunn will insert language into the Regulations to specify that the net income criteria for a BEP location should be reviewed and reconsidered every three (3) years. Also, he will check with Legal in regards to also specifying the fiscal years of when this will be effective. He will also verify with Legal if “net income” is considered before or after fee payment.

§ 7211 Definitions (B) (15) Mr. Nunn indicated that the definition of “direct competition” in regards to BEP locations on federal property cannot be deleted or amended because it is federal law.

§ 7211 Definitions (B) (18) – Election Coordinator. Mr. Nunn noted that this section of the Regulations is allowing the DOR more than one option in the selection of an “election coordinator”. It can be a DOR employee or an independent agent. All delegates were in agreement with this Regulation.

§ 7211 Definitions (B) (23) - Financial Averages. The DOR captures information from the vendor’s MOR reports to determine the “financial averages” for each type of BEP facility. Annually, the DOR should prepare this report on statewide averages. The data can be used to compare a vendor’s P&L report and to evaluate BEP facilities and its performance. It is used as a guideline for the DOR. A copy of the report should be distributed to all vendors.

Delegate Begian was concerned about the accuracy of the financial averages report. The only way to ensure the accuracy of this financial report and its data would be for the DOR to start auditing P&Ls.

Action Item: Some delegates would like to see an average MOR for each location listing all operating expenses, including other line items

such as fees and the net proceeds. Mr. Westbrook indicated that this information could be included in the report.

§ 7211 Definitions (B) (24) – Food Service Contractor. Delegate Begian and Mr. Nunn agreed that the definition of “Food Service Contractor” will need to be reviewed at the next Regulations review. Mr. Nunn was unsure if Food Service Contractors would be used outside of DOD contracts.

§ 7211 Definitions (B) (29) – Interim Facility Vendor List. It was confirmed that the BEP Selection Coordinator will maintain the interim list. The procedure is streamlined where one person maintains and updates the list. This reduces the chances of information getting lost or misinterpreted. The selection coordinator will not be responsible for selecting the vendor for interim facility opportunities. Information on available interim along with the list of interest vendors will be forwarded to the appropriate BEC for further resolution.

§ 7211 Definitions (B) (35) – Permit. No discussion. A copy of each permit will be forwarded to the CVPC.

§ 7211 Definitions (B) (40) – Selection Committee for Vending Facilities. The process has changed where now the selection committee will be comprised of representatives from the contracting agency unless they decline to participate.

§ 7211 Definitions (B) (47) – Suspension of Vendor’s Operating Agreement. Mr. Nunn confirmed that a suspension of a vendor’s operating agreement is a temporary recourse and only affects the facility governed by the suspended operating agreement. Suspension of a vendor’s operating agreement gives the vendor an opportunity to still operate another facility within their business enterprise until the matter is resolved.

§ 7211 Definitions (B) (52) – Unassigned Vending Machine Income. Mr. Nunn indicated that the BEP Regulations used the language from the State regulations on addressing unassigned vending machine income. The extensive federal regulations cover this topic in detail as well.

§ 7211 Definitions (B) (54) (2) – Vending Facility “Convenience stores” and “snack bar” are used interchangeably but essentially mean the same thing.

Mr. Nunn called attention to new terminology that has been inserted into the Regulations such as “primary”, “satellite”, “site”. “Location” has been deleted and will no longer be used to describe a vending facility. A vending facility can be made up of two or more sites, with one being a primary site and the other, a satellite. When a vendor resigns from his or her facility, they are leaving all the sites that comprise the vending machine entity or facility. The term location refers only to the physical address of the site.

Vending facility can also be called a “business enterprise” which is everything that a vendor manages and operates. A vendor can add a site to their business enterprise. One P&L is submitted for the business enterprise unless there is an interim site.

A primary location is determined or identified by the state.

There was some discussion regarding insurance rates and which site determines the rate a vendor will pay for liability insurance. Mr. Miller suggested that the rates are determined by a number of factors including type of vending facility, location, claims history, risk factors, gross sales volume, etc. This issue will be further investigated in the Benefits subcommittee.

Article 3. Eligibility and Training

§ 7212. - Eligibility Requirements, Application Assessment, Interview and Referral. The “Above average” rating was deleted from the regulation. A candidate either **qualifies** or **does not meet** the requirements of the vending training program.

§ 7212.1 Vendor Training Program. If a California vendor leaves the state and returns within 2 years, he or she can reinstate their CA vending license without retaking the training. An out-of-state vendor is required to take the California BEP training in order to be licensed in California. There are no exception to this rule.

§ 7212.2 Vendor-Trainers. If a vendor would like to be a trainer, he or she would have to be certified through the DOR. The trainer certification is valid for five years.

§ 7212.3 Client-trainee Responsibilities. Delegate Begian observed some of the “very relaxed” business attire of vendors. He was concerned that there is nothing in the Regulations to address the proper business attire for vendors at their facilities. Mr. Miller confirmed that there are attire requirements for food service operators known as **CURFFL – California Uniform Retail Food Facility Law**. When a BEC conducts a location review, the business attire of the vendor and staff is observed. Mr. Nunn mentioned that the Regulations only required that the vendor has clean clothing in good condition.

Action Item: Mr. Nunn will insert some language similar to the CURFFL law to reiterate and clarify the proper business attire for a BEP vendor when operating their facilities. Mr. Miller mentioned that proper attire is also addressed in the BEP training class and in the vendor’s operating agreement.

§ 7212.4 (b) In-Service and Upward Mobility Training. Delegate Begian was concerned that there is no mention of upward mobility training on computers, new technology, and Braille for blind vendors.

Mrs. Friesen noted that “vendors who are interested in upward mobility services may contact their former Vocational Rehabilitation Counselor or the nearest Blind Field Services office. Vendors pursuing training through the counselor should advise the BEP program of their application”. Mrs. Friesen remarked that requesting additional training after placement in a position or location is a legitimate use of vocational rehabilitation.

Candidates can be evaluated and tested on their independent living, mobility and computer skills to ensure they meet the requirements and are fully prepared for the extensive BEP training program. Trainees are required to have working knowledge of computer starting the BEP Training class.

Delegate Murphy will address upward mobility training for vendors more extensively in his subcommittee and try to find options and

resources for vendors. It is a major goal for his subcommittee this CVPC term.

The Braille Institute in Los Angeles and San Diego Center for the Blind and Vision Impaired and other organizations sponsor and facilitate computer classes for the blind.

Article 4. Licensing

§ 7213.1 (f) Suspension or Termination of a Vendor's License

The intent of this section is that when a vendor's license is terminated because of their own actions or behavior, it is a final decision. The vendor cannot be reinstated back into the program.

§ 7213.2 (i) Suspension or Termination of License or Operating Agreement

If a vendor has two or more sites in their vending facility and is suspended or terminated from one of the sites, the vendor may still continue to operate the site with an **active** operating agreement in place.

§ 7213.3 Good Cause for Suspension or Termination of License or Operating Agreement

Any action that can seriously jeopardize the operation of a vending facility is reason for termination. If the action is not listed in the Regulations, the DOR will have to show just cause for the proposed termination. The list presented in the Regulations have been agreed upon by the vendors and DOR as justifiable causes of termination of a license or operating agreement.

Article 5 – Vending Facilities; Application, Selection and Placement

§ 7214.1 (f) (1) Vendor Application Requirements and the

Application Process. Mr. Friesen clarified that a vendor can still apply for a location if the delinquent fee is **less than \$100**; the **delinquency cannot be in the last 60 days**. If a vendor has not filed an MOR and has not submitted paid fees within 25 days, the vendor is considered delinquent.

Mrs. Friesen mentioned that “an applicant should bring evidence of recent payment to the interview to avoid any potential disqualification”.

Mr. Nunn reiterated that the DOR is giving the vendor an opportunity to remedy the delinquency and the ability to pursue a location.

Mr. Miller mentioned that when the program is reviewing the applications and they notice a vendor is delinquent, it is usually not the first notification of the delinquency. There are several opportunities for a vendor to resolve the delinquency before a selection committee is scheduled.

§ 7214.2 (d) and (e) Vendor Business Plan and Resume. Mr. Nunn remarked that the intent of the statement: ***“failing to limit the resume and the business plan to the required length may result in the disqualification of the applicant”*** was to ensure that the information is limited so that a selection panel can actually review it within the allotted timeframe.

Delegates noted selection committees tend to be very impressed with those vendors who present a resume and business plan.

Mr. Friesen received the impression from the last CVPC Training Conference that, overall, vendors wanted to know more about creating a business plan and developing a strategy for their businesses. He noted that this is a transition period for the program and requiring business plans to be submitted is worth leaving in the Regulations for now; the Regulations can be reviewed in the next 3 years, if adjustments are necessary.

Mrs. Friesen indicated that some selection committee members have delayed their decision in order to verify the information presented in a vendor's resume, including visiting the vendor's facility.

Delegate Began suggested submitting the required resume and/or business plan to the selection committee members a couple of days before the scheduled selection committee. This would give them the opportunity and sufficient time to review the information. Mr. Friesen mentioned that the time allotment for the selection committee was increase from 45 minutes to 1 hour. The extra 15 minutes was to give the selection panel members time to review the candidate's information before the interview.

Mr. Nunn noted that the business plan becomes part of the operating agreement when a vendor begins operation of the facility. The

agency can refer back to the agreement if the vendor is not operating the facility according to his or her initial business plan.

Mr. Friesen also remarked that the selection committee is allowed some time before making a final decision. It is not unusual for a selection committee to visit a vendor's current facility or verify his or her references. They often will take the top 2 or 3 candidates and these are the applicants that they will investigate. Each contracting agency performs the selection of vendors differently.

“Failure to limit the resume and the business plan to the required length may result in the disqualification of the applicant.” A poll was taken whether a resume and/or business plan that does not meet the requirements set forth in the Regulations, should disqualify the vendor from the selection committee.

Delegate Evans	Disqualify the plan.
Delegate Murphy	Change the word “may” to “shall”. Disqualify the resume and /or business plan if it does not meet the criteria.
Delegate Adams	Disqualify the plan.
Delegate Griffith	Allow the selection committee to disqualify the vendor. Does not want the DOR to have the discretion to disqualify a vendor.
Delegate Begian	Disqualify the business plan.
Delegate Bedikian	Disqualify the business plan
Delegate Collins	No decision
Delegate Hanlon	Disqualify the business plan

If a vendor's business plan is disqualified, the vendor would not be able to submit it at the time of the selection committee. He or she would still be able to participate in the selection committee and complete the interview. The vendor still has the opportunity to make an oral presentation to the panel.

The revised statement should be **“Failing to limit the resume and the business plan to the required length shall result in the disqualification of the resume and business plan”**.

The Selection Committee Coordinator is responsible for ensuring that the resume and business plans are in compliance to the criteria set forth in the Regulations.

§ 7214.3 (d) Selection Coordinator and Selection Committee for Vending Facilities Selection Process. The Selection Coordinator and Chairperson have set responsibilities and roles during the selection committee process. The coordinator ensures that the selection panel members are aware of their roles, the expectations and procedures of the selection committee.

Mr. Friesen remarked that the panel is aware of the BEP facility and the details of it from the location announcement. Delegate Begian was concerned that the other panel members may not be aware of the operational details of the location. Mrs. Friesen read that the duty of the selection coordinator is to clarify “conditions and requirements that apply to the vending facility for which applicants are competing as necessary.”

§ 7214.4 (c) (1) Vending Facilities; Interviews and Selection of Vendor. Mrs. Friesen addressed Delegate Begian’s concern regarding the voting process when there are only 2 selection committee members present instead of 3.

“If a member from the selection committee for a vending facility is unable to participate in each interview the scores for that member will be eliminated from the scoring of all applicants. This applies to all occasions when the member is not present during the interview whether because of tardiness, emergencies or other reasons except for the reason stated in subsection (c) herein.”

Mr. Nunn confirmed that a CVPC delegate can attend a selection committee; however, it is not a requirement that a delegate be present. If a CVPC delegate is unable to attend a selection committee, the delegate can assign a representative to attend in his or her place. It is to the discretion of the contracting agency to review the vendor’s business plan before the selection committee.

§ 7214.7 Vending Removal after Selection. No discussion.

Article 7 – Standards for the Establishment and Closure of Vending Facilities.

§ 7216.1 (c) Consolidating or Combining Multiple Sites into a Vending Facility. Delegate Begian was concerned about the 50 mile restriction.

Mr. Harmon confirmed that it is possible to service vending facilities that are farther than 50 miles apart.

Mr. Miller confirmed that there are vendors who have facilities in different parts of the state. He gave an example of one vendor who had facilities in opposite parts of the state, the performance and quality of service was greatly affected.

Mrs. Friesen mentioned that when the 50 –mile rule was discussed back in 2002, the CVPC was referring to vending facilities rather than vending machine routes. One issue that arose from the discussion was if there was an emergency, could the vendor respond promptly to the situation. Another matter involved service calls which could be difficult because of the distance. Storage of food and warehousing space could potentially be a problem as well.

Delegate Murphy mentioned that in reaction to the arguments presented, the program can restrict a vendor to live within 50 miles of their BEP location.

Mr. Friesen recommended removing the restriction and to allow the QLDC the responsibility to monitor how the DOR establishes new BEP facilities.

A poll was taken to either keep or eliminate the 50 mile restriction.

Delegate Evans	Eliminate the 50 mile rule
Delegate Murphy	Eliminate the 50 mile rule
Delegate Adams	Eliminate the 50 mile rule
Delegate Griffith	Eliminate the 50 mile rule
Delegate Begian	Eliminate the 50 mile rule
Delegate Bedikian	Eliminate the 50 mile rule
Delegate Collins	Eliminate the 50 mile rule
Delegate Hanlon	Eliminate the 50 mile rule

Conclusion: All delegates agreed that there should not be any restrictions placed upon the vendor in the management of their facilities; therefore eliminate the 50-mile rule.

Article 8 – Vending Facility Equipment

§ 7217 BEP Owned Equipment. Mr. Miller confirmed although it is being practiced, having an outside company service or to replace BEP equipment is highly discouraged by the DOR because it is outside of the service contract. All delegates agreed that BEP owned equipment should not be contracted out or subleased by vendor under any circumstances.

Mr. Friesen mentioned that there may be a potential conflict especially with teaming partners and agreements. They would not be able to use BEP-owned equipment.

Mr. Friesen mentioned that the federal law does address how the DOR may reduce the set-aside fee for vendors who own and use their own equipment. There is no reference of this in the proposed Regulations. Mr. Nunn noted the comments and will ensure the CVPC's observations are included in the Regulations.

Article 9 – Vending Facilities Operations

§ 7220 (A) Operation of a Vending Facility. Delegate Begian questioned the Regulations' wording that "vendors who employ family members may be asked to demonstrate that compensation is reasonable."

Mr. Friesen remarked that the intent of this section was to prevent a vendor from reducing set-aside fees due to the over-compensation of family member(s).

Mr. Nunn commented that it would be difficult to write this section differently for regulatory purposes. There would need to be some additional auditing by the DOR. Because of this Regulation, the DOR has the right to hold a vendor accountable by initiating an audit review.

Mr. Dowling remarked that the State of California has a listing of every job title including lowest and highest salaries for each position. The duties and responsibilities of the position are clearly defined. It is a tool the DOR can utilize if they suspect a vendor is compensating a family member or employee beyond the standard salary requirements.

Delegate Began had reservations regarding the statement: “under no circumstances shall a vendor purchase services, merchandise, supplies, or equipment from a person, corporation, partnership or other legal entity if the vendor or immediate family member has proprietary interests of any type in the organization.” He felt that this is a vendor’s right and can be challenged in court. He felt the DOR should not place restrictions on who the vendor does business with; every vendor has the opportunity to prosper in the program. Because a vendor does business with a family member, it does not mean a vendor will intentionally mark up his or her prices. This Regulation seems to prevent a vendor from advancement.

Delegate Murphy responded that the Regulations want to prevent vendors from increasing expenses and food costs on the MOR to prevent paying fee.

Mr. Nunn felt that the Regulations protects the program, reduces the DOR’s risks and can discourage someone from taking advantage of the program.

Mr. Friesen commented that this section of the Regulations can be grounds for the DOR to terminate a vendor who may already be guilty of the violation.

A poll was taken to include language that allows the vendor to do business with a family member but at the same time discourages a vendor to enter a business relationship that could prohibit them from paying fees to the program.

Delegate Evans	Change the existing language
Delegate Murphy	Change the existing language
Delegate Adams	Change the existing language
Delegate Griffith	Change the existing language
Delegate Began	Change the existing language
Delegate Bedikian	Change the existing language
Delegate Collins	Change the existing language
Delegate Hanlon	Change the existing language

Conclusion: All delegates unanimously agreed to change and clarify the existing language to discourage vendors to enter into business relationships with family members that may prevent them from paying fees.

§ 7222 Initial Stock of Vending Machine Merchandise. If a vendor leaves their facility, Mr. Miller clarified that the Regulations state that the inventory stock can be retained by the DOR for up to 6 months or until the case is closed, whichever comes first. The stock is purchased with case funds and not trust funds. The DOR has made an investment in the merchandise and client. If the client has not met the requirements of the “individual employment plan”, the DOR will retain the stock and resell the merchandise to someone else.

Mr. Miller remarked that in other states the initial inventory is purchased and if and when the vendor leaves the facility, the vendor can leave the amount of the initial inventory, leave a check (if there is a shortage of inventory) or get a check from the program (if there is excess inventory). This process ensures that there is always inventory when a new vendor begins operation of a facility.

In Alaska, Delegate Murphy mentioned that the state buys the vendor’s inventory upon leave of the facility. There state tries to make sure there is very little disruption in service when a new vendor takes over the facility.

Article 10 – Vending Facility Trust Fund and Standards for Vending Machine Commissions

§ 7224 Vending Machine Commissions. Mr. Miller responded that the DOR can authorize repairs and services outside of the statewide contract and deduct it from fee. There have been emergency situations where service repairmen were not available. The vendor was directed and authorized to have the equipment repaired and deducted the costs from their MOR. These situations rarely occur as the DOR tries to adhere to the service contract.

Delegate Murphy remarked that it is beneficial for a vendor to pay the 6% fee requirement and have the state make the repairs and equipment replacements. In other states, some vendors prefer their own equipment.

Article 11 – State Committee of Blind Vendors

§ 7226 (d) General Provisions. Mr. Friesen remarked that the federal and state law does not allow a delegate to represent more

than 25 vendors. In California, the Regulations were revised to state that there cannot be more than a 7 vendor differential between districts.

§ 7226 (f) Mr. Friesen noted that the Executive Committee can appoint a replacement delegate within 60 days, if a delegate accepts a vending facility in another district.

Article 12 – Administrative Review and Full Evidentiary Hearing

§ 7227 **General Provisions.** Mrs. Friesen responded that the DR510 or DR511 Grievance Forms can be placed on the CVPC website upon receipt of an approved form.

§ 7227.1 **Administrative Review.** Mr. Dowling suggested that a vendor shows justification of a complaint and include supporting documentation to support the argument such as sections of Regulations or W & I Code (s) that have been violated. There needs to be some boundaries to prevent frivolous complaints from being submitted.

Delegate Hanlon responded that a vendor can have an issue or can be dissatisfied with the program itself or its policy but not necessarily with Regulations. The vendor has the right to file a grievance.

Mr. Friesen remarked that it should be the responsibility of the administrative hearing officer who decides whether or not the complaint is justifiable. He used a recent example of a vendor who requested a different BEC because of a personality conflict. According to the law, the vendor has the right to file a grievance.

Mrs. Friesen supported the concerns expressed by reading a section of the W & I Code which states, “**any blind vendor who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to the department a request for a full evidentiary hearing which shall be provided by the department.**”

According to the W & I Code, a vendor is not required to cite actual Regulation to support a complaint or grievance.

Mr. Miller suggested that if the CVPC gives the vendor the option to site the violated Regulation or law, it would give the DOR an opportunity to possibly reject the complaint. Some vendors may not be familiar with the law. Mrs. Harmon also warned that a vendor can increase the risk of their complaint getting rejected by citing the wrong issue, regulation or law, thus hindering their due process.

B. Motion re: To accept the proposed Rules and Regulations as reviewed and/or amended.

MOTION 2006.048. Moved that CVPC approves the BEP Proposed draft Regulations dated April 17, 2007, except for the following qualifications:

- BEP regulations are replete with requirements for vendors and consequences of vendors violating these regulations. While we understand the merits of regulations spelling this out precisely, we also believe the responsibilities of BEP staff to all vendors should be definitely set out to a greater degree than is presently included in the regulations. BEP has shown a tremendous lack of consistency in the administration of the Program. Inconsistencies result in grievances, requests for fair hearings and some vendors pursuing the filing of Personnel Actions against staff. The disregard for following the W & I Codes has caused the fourteen-year delay in amending BEP Regulations. As a business Program it is vital to review and possibly revise BEP regulations every three years as prescribed in W & I Code Section 19639(a).
- Forms referred to in the regulations were not included. CVPC should have the opportunity to review and comment on any proposed forms or changes to existing forms.
- A request was made of Legal for an opinion as to the definition of the term “control” as used in 7211(a)(12). We have not been given that opinion to date.
- We disagree with Section 7220(e) where vendors are required to purchase liability insurance from the agent identified by the Department. We question the legality of this regulation. This may possibly violate the Sherman, Clayton, and Unfair Practices Acts. This also might be challenged by Federal Anti Trust Laws.

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- The section on “DOD Teaming Contractors” was not included in this package. We realize it is in process but we reserve the right to review and comment on that section when it is completed.
 - The section on BEP Owned Equipment was not included in the package. We realize it is in process but we reserve the right to review and comment on that section when it is completed.
 - The section on Administrative review and Full Evidentiary hearing requires Vendors to use DR 510/511. CVPC believes with the time restrictions imposed on the vendor for their filing, vendors should be able to use the DR 510/511 or state their Grievance by letter.
 - The section on Adequate Net Income should be changed to read; “That minimum income shall be adjusted annually **starting June 30, 2007** in accordance with the Welfare and Institutions Code, Section 19629(b) by using the cost of living separate indices for Los Angeles and San Francisco and as published by the United States Bureau of Labor Statistics”
 - The section on Vendor Business Plan and Resume should not disqualify the vendor but only the vendor use of either the business plan or resume if either/or do not meet the criteria font or pages. Further the committee would like to have the word may changed to shall in the line stating; “may result in the disqualification of the applicant.”
 - The disagrees with the section on Consolidating or Combining Multiple Sites Into a Vending Facility including any reference to distance between facilities and would like the 50 miles removed.
 - The committee believes 7220 (i)(3) should have the following added at the end of the paragraph; “In order to inflate the cost of goods for the purpose reducing fees.

Moved: Delegate Hanlon
Seconded: Delegate Murphy
Vote: Motion Passed
Absent: Delegate Martin-Hanlon

District One – Yes
District Two – Yes

District Six – Absent
District Seven – Yes

District Three - No

District Eight - Yes

District Four – Yes

District Nine – Yes

District Five – Chairperson

District Ten - Yes

There were 2 motions that developed from the closed session meeting.

MOTION 2006.049. Moved that the CVPC authorize the CVPC Executive Committee to request DOR contracts to increase the contract to Ben Allamano by \$5000.00 to cover costs for legal action.

Moved: Delegate Begian
Seconded: Delegate Bedikian
Vote: Passed Unanimously
Absent: Delegate Martin-Hanlon

MOTION 2006.050. Moved that the CVPC Executive Committee arrange a teleconference call on May 25, 2007 at 9:00 am for a closed session to discuss further actions concerning the writ of mandate. Date and time can be adjusted by Executive Committee if there is not a resolve to the Demurrer by this date.

Moved: Delegate Begian
Seconded: Delegate Murphy
Vote: Passed Unanimously
Absent: Delegate Martin-Hanlon

ADJOURNMENT

MOTION 2006.051. Moved to adjourn at 4:30 pm on May 16, 2007

Moved: Delegate Murphy
Seconded: Delegate Begian
Vote: Passed Unanimously
Absent: Delegate Martin-Hanlon

