

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63 – All Rules Filed for Review

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Throughout these Rules, do not capitalize “business enterprises” except in “Business Enterprise Program” and capitalize “State” if you mean North Carolina.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63A .0101 is readopted as published in 32:22 NCR 2392 as follows:

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3

**CHAPTER 63 - SERVICES FOR THE BLIND**

4

5

**SUBCHAPTER 63A - ORGANIZATION**

6

7

**SECTION .0100 - RIGHTS**

8

9

**10A NCAC 63A .0101 NON-DISCRIMINATION**

10 No individual seeking or receiving services through any program administered by the Division of Services for the

11 Blind shall be discriminated against on the basis of race, national origin, gender, religion, or disabling condition.

12

13 *History Note: Authority G.S. 143B-157;*

14 *Eff. August 1, ~~2002~~, 2002;*

15 *Readopted Eff.\_\_\_\_\_*

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0101

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Lines 10-16 – delete all of Paragraph (a) – it does not set forth any requirements or confer any benefits on any person.*

*Lines 22 and 24 –add a comma after “State”*

*Line 25 – add “means a program that” before “provides”*

*Line 32 – delete “an ongoing transparent process of good-faith” or define each of the vague terms.*

*Line 36 – add “the” before “sponsor”*

*Line 36 – replace “the” with “a” twice.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0101 is amended as published in 32:22 NCR 2392 as follows:

2  
3 **SUBCHAPTER 63C - BUSINESS ENTERPRISES PROGRAM**

4  
5 **SECTION .0100 – BUSINESS ENTERPRISES PROGRAM**

6  
7 **10A NCAC 63C .0101 PURPOSE AND DEFINITIONS**

8 (a) The Business Enterprises Program is a rehabilitative program administered in accordance with the Department of  
9 Health and Human Services through the Division of Services for the Blind (DSB). DSB is designated as the State  
10 Licensing Agency (SLA) under 34 CFR Part 395. This program provides training and self-employment opportunities  
11 in state, federal, and other properties throughout the State of North Carolina for eligible residents who are legally  
12 blind, which helps provide employment opportunities and economic security to blind individuals. The rules in this  
13 Subchapter are promulgated pursuant to 34 CFR Part 395 and G.S. 111 for the purpose of governing the operation and  
14 administration of the Business Enterprises Program in this state.

15 (b) As used in this Subchapter:

- 16 (1) “Blind person” or “legally blind” means a person who meets the criteria defined in 34 CFR 395.1(c)  
17 and G.S. 111-11.
- 18 (2) “Division” or “DSB” means Division of Services for the Blind.
- 19 ~~(1)~~(3) “Blind licensee” or “licensee” means a blind person licensed by the Division to operate a Business  
20 Enterprises facility on ~~federal~~ federal, state or other property.
- 21 ~~(2)~~(4) “Blind operator” or “operator” means a blind licensee who is operating a Business Enterprises  
22 facility on ~~federal~~ federal, state or other property.
- 23 ~~(3)~~(5) The “Business Enterprises Program (BEP)” provides training and the opportunity for blind  
24 individuals to achieve self-employment with remunerative employment through the operation of  
25 vending and food service facilities on federal, state, and other properties.
- 26 ~~(4)~~(6) “Business Enterprises facility” “or facility” means any vending and food service facility operated  
27 by the North Carolina Business Enterprises Program as defined in 34 CFR 395.1.
- 28 (7) “Elected Committee of Blind Vendors (ECBV)” means a committee as defined in 34 CFR 395.14  
29 whose members are elected by the Business Enterprises operators.
- 30 (8) “Active participation” means an ongoing transparent process of good-faith communications and  
31 negotiations between the Elected Committee of Blind Vendors and the Division in matters  
32 pertaining to major administrative decisions and policy and program development decisions  
33 affecting the overall administration of the Business Enterprises Program prior to implementation.
- 34 (9) “Host facility” means sponsor or owner of the site upon which the Business Enterprises facility is  
35 located.
- 36

37 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107;*

1                   *Eff. February 1, 1976;*  
2                   *Readopted Eff. November 16, 1977;*  
3                   *Amended Eff. August 1, 2002; February 1, 1986; October 1, 1978;*  
4                   *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
5                   *23, ~~2015~~ 2015;*  
6                   *Amended Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0102

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Lines 6-11 – consider revising as follows:*

- (a) The Division shall assure that:
  - (1) each operator is provided access to all program and financial data of the Division relevant to the operation of the Business Enterprises Program, including quarterly and annual financial reports, to the extent that such disclosure does not violate applicable federal and State laws pertaining to the disclosure of confidential information;
  - (2) insofar as practicable such data shall be made available electronically, on tape, disk, large print, and Braille; and
  - (3) at the request of an operator, the Division shall arrange a convenient time to assist in the interpretation of such data.

*Line 15 – delete or define “in a timely manner”*

*Line 17 – replace “carry out full responsibility for the supervision and management of” with “supervise and manage”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0102 is readopted as published in 32:22 NCR 2392 as follows:

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3 **10A NCAC 63C .0102 DIVISION RESPONSIBILITY**

4 ~~(a) The Division shall not provide for services or costs which pertain to the ongoing operation of an individual facility~~  
5 ~~after the initial establishment period.~~

6 ~~(b)~~(a) The Division shall assure that each operator is provided access to all program and financial data of the Division  
7 relevant to the operation of the ~~state vending facility program~~, Business Enterprises Program, including quarterly and  
8 annual financial reports, to the extent that such disclosure does not violate applicable federal and state laws pertaining  
9 to the disclosure of confidential information; that insofar as practicable such data shall be made available  
10 electronically, on tape, disk, large print, and Braille; and that, at the request of an operator, the Division ~~will~~ shall  
11 arrange a convenient time to assist in the interpretation of such data.

12 ~~(c)~~(b) The Division shall furnish to each operator copies of documents relevant to the operation of the Business  
13 Enterprises facility, including the ~~rules, and regulations~~, rules, regulations and program manuals, a written description  
14 of the arrangements for providing services, and the agreement and permit covering the operation of the Business  
15 Enterprises facility, and ~~shall~~ shall, upon request, explain these documents to each operator in a timely manner.  
16 Documents shall be made available in the requested accessible format.

17 (c) The Division shall carry out full responsibility for the supervision and management of each Business Enterprises  
18 facility in accordance with the rules and regulations governing the Business Enterprises Program.

19 (d) The Division shall assist the Elected Committee of Blind Vendors in planning meetings and instructional  
20 conferences upon request.

21

22 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107;*

23 *Eff. February 1, 1976;*

24 *Readopted Eff. November 16, 1977;*

25 *Amended Eff. August 1, 2002; October 1, 1978. 1978;*

26 *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0103

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 6 – delete “determined by the Division”*

*Line 7 – replace “(c)” with “Paragraph (c) of this Rule”*

*Line 8 – replace “is” with “shall be”*

*Line 10 – replace “The” with “If the”*

*Line 10 – delete “shall”*

*Line 10 – add a comma after “title to”*

*Line 11 – add a comma after “and”*

*Line 12 – delete “or” before “for any”*

*Line 12 – add “the” before “ownership”*

*Line 13 – replace “on” with “of”*

*Lines 14 and 15 – delete all four commas*

*Lines 17 and 18 – delete the parentheses or the entire parentheticals*

*Line 19 – show the deleted comma as follows: “~~facility~~, facility”*

*Lines 20 – replace “equipment repairs and replacement” with “repair or replacement of equipment”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel

Date submitted to agency: Tuesday, September 4, 2018



1 10A NCAC 63C .0103 is amended as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0103 STAND BUSINESS ENTERPRISES FACILITY EQUIPMENT: MERCHANDISE:**  
4 **AND SUPPLIES**

5 (a) The Division shall furnish each Business Enterprises facility with the equipment, initial stock, and initial supplies  
6 that are determined by the Division necessary to operate the unit.

7 (b) Except as set forth in Paragraph (c) of this Rule. ~~The~~ the right, title to, and interest in Business Enterprises  
8 equipment, merchandise, petty cash, and all other assets used in the program is vested in the Division only and may  
9 be used and disposed of by the Division for program purposes only, and in accordance with state and federal law.

10 (c) If the Division and operator agree in writing that the right, title to and interest in Business Enterprises stock will  
11 be vested in the operator, then the Division shall retain a first option to repurchase such stock and in the event the  
12 operator dies, or for any other reason ceases to be an operator, or transfers to another vending facility, ownership of  
13 such stock shall become vested in the Division for transfer to a successor operator subject to an obligation on the  
14 Division to pay to such operator, or the operator’s heirs, the fair value of the stock. The Division’s obligation to pay  
15 the fair value of the stock to the operator, or the operator’s heirs, under this rule shall be reduced by the amount of any  
16 outstanding debt owed by the operator to the Division.

17 ~~(e)(d)~~ (d) The Division shall maintain (or cause to be maintained) all Business Enterprises equipment in good repair and  
18 in attractive condition, and shall replace (or cause to be replaced) worn-out or obsolete equipment as required to assure  
19 the continued successful operation of the ~~facility. facility, subject to availability of funds.~~ The licensed operator of a  
20 facility shall take the initiative in identifying needed equipment repairs and replacement.

21

22 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.6; 20 U.S.C. Sec. 107;*

23 *Eff. October 1, 1978;*

24 *Amended Eff. August 1, 2002;*

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
26 *23, 2015- 2015;*

27 *Amended Eff. \_\_\_\_\_.*

1 10A NCAC 63C .0104 is amended as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0104 TRAINING PROGRAM**

4 The Division shall provide for the training of legally blind individuals according to the requirements of 34 CFR 395.11  
5 and for the training and retraining of blind operators with assistance from the ~~state committee of blind vendors.~~ Elected  
6 Committee of Blind Vendors.

7

8 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.11; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;*  
9 *Eff. October 1, 1978;*

10 *Amended Eff. August 1, 2002; February 1, 1986;*

11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
12 *23, ~~2015.~~ 2015;*

13 *Amended Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0201

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 8 – add “licensing” before “agreement” if that is what is meant*

*Line 8 – add “shall be” before “subject”*

*Line 9-10 – delete “the Division finds that”*

*Line 10 – replace “its” with a specification of which rules you mean. Delete “regulations” unless you mean federal regulations and, if that is what is intended, specify what regulations are meant.*

*Line 11 – what “permit” is referred to here?*

*Line 11 – replace “permit and the” with “permit, or the”*

*Line 11 – replace “agreement with the operator” with “licensing agreement”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0201 is amended as published in 32:22 NCR 2392 as follows:

2  
3 **SECTION .0200 - LICENSING AND PLACEMENT**

4  
5 **10A NCAC 63C .0201 ISSUANCE OF LICENSES**

6 The Division, through the Business Enterprises Program, shall license blind ~~persons~~ individuals who meet eligibility  
7 requirements for the Business Enterprises Program. The licensee shall signify acceptance of the licensing by placing  
8 their signature or mark on the agreement. This license shall be issued for an indefinite ~~period.~~ period but subject to  
9 suspension or termination if, after affording the operator or licensee an opportunity for a full evidentiary hearing, the  
10 Division finds that the Business Enterprises facility is not being operated in accordance with its rules and regulations,  
11 the terms and conditions of the permit and the terms and conditions of the agreement with the operator. ~~The licensee~~  
12 ~~shall signify his acceptance of the licensing agreement by affixing his signature or mark thereon.~~

13  
14 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*  
15 *Eff. October 1, 1978;*  
16 *Amended Eff. August 1, 2002;*  
17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
18 *23, ~~2015.~~ 2015.*  
19 *Amended Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0202

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 5 – add “the” before “Business”*

*Line 5 – add “Program” after “Enterprises”*

*Line 7 – replace “consumer must” with “prospective licensee shall” if that is what is meant.*

*Line 8 – delete “as outlined”*

*Line 11 – do you mean “Chapter” or “Subchapter”?*

*Line 14 – add a comma after “comprehension”*

*Line 16 – delete or define “demonstrate the potential to”*

*Line 17 – add a comma after “Division”*

*Line 19 – delete the semicolon*

*Line 20 – replace “conviction(s)” with “convictions”*

*Line 21 – add “of” before “any”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0202 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING**

4 (a) The Division shall interview prospective licensees as referred by the vocational rehabilitation program and shall  
5 make written recommendations to the Chief of Business Enterprises concerning the potential of the referral  
6 commensurate with the specific job requirements of the Business Enterprises Program.

7 (b) ~~To be licensed;~~ considered for training and licensure, the consumer must:

8 (1) ~~The consumer must~~ meet the definition of legally blind as outlined in ~~34 CFR 395.1;~~ 34 CFR  
9 395.1(c) and G.S. 111-11;

10 (2) ~~The consumer must~~ be at least ~~18~~ 21 years of age;

11 (3) ~~The consumer must~~ be physically able to perform all the duties as further detailed in this Chapter;

12 (4) ~~All consumers must~~ be evaluated for and demonstrate proficiency of skill in basic mobility, ~~activities~~  
13 ~~of daily living, mathematics~~ mathematics, basic computer skills, verbal and written  
14 communications, reading comprehension and basic food service practices;

15 (5) ~~The consumer must~~ be familiar with the rules and regulations for Business Enterprises ~~facility~~  
16 ~~operators. Program;~~ The consumer must demonstrate the potential to successfully complete the  
17 Business Enterprises training program sponsored by the Division and must be certified by the  
18 Division as capable of operating a Business Enterprises facility;

19 (6) ~~The consumer must~~ be a citizen of the United States; and reside in North Carolina;

20 (7) ~~The consumer must have no~~ not have previous conviction(s) of ~~any felony class A through E.~~  
21 misdemeanors involving crimes of dishonesty or any felony; and

22 (8) submit to and pass a drug and alcohol screening provided by the Division.

23

24 *History Note:* Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107; 143B-157;

25 *Eff. October 1, 1978;*

26 *Amended Eff. January 1, 2009; August 1, 2002; August 1, 1990; February 1, 1986; June 1, 1982.*  
27 *1982;*

28 *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 5 – delete the comma*

*Lines 14 and 16 – replace “at which” with “that”*

*Line 17 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances determine whether or not a license may be suspended or terminated?*

*Line 17 – replace “for any of the following reasons” with “if the operator”*

*Line 19 – revise this line as follows: “has an illness that lasts at least three months, with a medically”*

*Line 23 – replace “withdrawal of the operator” with “withdraws”*

*Line 26 – replace “conviction” with “is convicted”*

*Line 27 – add “of” before “felony”*

*Line 29 – add “commits” before “willful”*

*Line 30 – replace “Possession of” with “possesses”*

*Line 34 – replace “reporting to Business” with “reports to a business”*

*Line 35 – replace “partaking” with “partakes”*

*Page 2, lines 1, 4, 8, 10, 12, 15, 18, and 20 – replace “failing” with “fails”*

*Page 2, lines 1 and 2 – add a comma after “facility”*

*Page 2, lines 4-5 – move “three times during the calendar year” to after “fails” on line 4*

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

*Page 2, lines 10 and 18 – capitalize “State”*

*Page 2, line 12 – add a comma after “liability”*

*Page 2, line 14 – replace “using” with “uses”*

*Page 2, line 15 – add “business enterprises” before “facility”*

*Page 2, line 20 – replace “in” with “required by”*

*Page 2, lines 21-22 – delete “in the opinion of the Division”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018



1 10A NCAC 63C .0203 is readopted with changes as published in 32:22 NCR 2392 as follows:

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**10A NCAC 63C .0203 ~~SUSPEND; TERMINATE LINCENSE;~~ SUSPENSION OR TERMINATION OF LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY**

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity ~~for~~ to appeal the decision as set forth in Section.0400. a full evidentiary hearing, when it finds that his facility is not being ~~operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or permit between the Division and the sponsor of the building or site upon which the Business Enterprises facility is located; or with the terms of the contract between the operator and the Division relating to the particular assignment.~~

~~(b) An operator may be warned prior to suspension or termination of a license, particularly in situations where lack of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit or irreparable damage to the Business Enterprises Program.~~

~~(b) The license of a licensee shall be terminated if the licensee’s vision is improved by conventional means to the point at which the licensee is not legally blind.~~

~~(c) The license of an operator shall be terminated if the operator’s vision is improved by conventional means to the point at which the operator is not legally blind.~~

~~(e)~~(d) Licenses to operators may also be suspended or terminated for any of the following reasons:

- ~~(1) —~~ Vision improves so that the operator is no longer eligible for licensing;
- ~~(2)~~(1) ~~Extended illness~~ extended illness, defined as lasting at least three months, occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;
- ~~(3)~~(2) ~~Withdrawal~~ withdrawal of the operator from the program upon his written notification to the Division;
- ~~(4) —~~ Gross misconduct or conduct so reprehensible as to bring discredit to the program;
- ~~(5)~~(3) ~~Conviction~~ conviction of a felony (Class A through E); misdemeanor involving crimes of dishonesty or any felony;
- ~~(6)~~(4) ~~Falsified~~ falsified information pertaining to eligibility requirements;
- ~~(7)~~(5) ~~Willful~~ willful acts that would endanger the lives and property of others;
- ~~(8)~~(6) Possession of firearms or lethal weapons ~~on the job; site at a Business Enterprises facility~~ unless otherwise allowed by law. Operators and licensees who choose to carry concealed weapons as allowed by law on site at a Business Enterprises facility shall provide the Division with a copy of their concealed weapons permit;
- ~~(9)~~(7) ~~Reporting~~ reporting to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the job;

- 1           (8) failing to personally operate the awarded facility as set forth in the operator agreement and permit  
2           or contract with the host facility unless prior written approval to operate the facility in another  
3           manner has been obtained from the Division;  
4           (9) failing to pay fees to the Controller's Office by the 15<sup>th</sup> day of the month following the month in  
5           which the business was transacted three times during the calendar year;  
6           (10) failing to preserve required financial and other records with the Division as required by this  
7           Subchapter;  
8           (11) failing to cooperate with record keeping reviews conducted by the Division as required by this  
9           Subchapter;  
10          (12) failing to cooperate with audits conducted by state or federal agencies as required by this  
11          Subchapter;  
12          (13) failing to maintain bonding, liability and workers compensation insurance coverage as required by  
13          law or policy;  
14          (14) using Business Enterprises equipment and or facility to operate another business;  
15          (15) failing to maintain facility equipment in a sanitary and operable condition within the scope of the  
16          operator's level of maintenance authorization;  
17          (16) removing facility equipment without written authorization from the Division;  
18          (17) failing to comply with federal or state law prohibiting discrimination in hiring and service to  
19          customers; and  
20          (18) failing to comply with the operator's responsibilities in this Subchapter or the operator's agreement.

21 (d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the  
22 opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the  
23 seriousness of the situation, but shall not exceed a maximum of 60 days.

24  
25 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*  
26 *Eff. October 1, 1978;*  
27 *Amended Eff. August 1, 2002; February 1, 1986. 1986;*  
28 *Readopted Eff. \_\_\_\_\_.*

RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0204

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
- Failure to comply with the APA
- Extend the period of review

COMMENT: Staff recommends that the Rules Review Commission object to the Rule because it differs substantially from the proposed rule.

On page 1, line 23, Paragraph (c), the time to request adjustments to the point total that ranks applicants is reduced from 5 to 2 days after receipt by the applicant.

On page 3, line 20, Part (d)(1)(A), the maximum number of points that may be awarded has been reduced from 10 to 5.

On page 4, lines 19, 21, 23, and 25, Parts (d)(3)(B)-(E), the points that may be awarded have been reduced from prior levels.

On page 4, lines 27-30, Parts (d)(3)(F) and (G), new categories for the award of points have been added.

On page 5, lines 25-27, Part (d)(4)(D), math questions have been added to the oral exam.

On page 6, Subparagraph (d)(6) appears to be entirely new.

On page 7, line 8, Subparagraph (d)(10), the time for an applicant to fill a vacancy is reduced from 30 to 20 days.

Jason Thomas  
Commission Counsel  
Issued June 7, 2018

On page 7, line 15, Subparagraph (d)(12), the time during which an applicant must have operated a facility has been increased from 6 to 12 months.

On page 7, lines 23-25, Subparagraph (d)(14), the period between financial analyses has been increased from 2 to 3 years, and the time that must elapse for an analysis to be completed for an applicant in a new facility has been increased from 4 to 9 months.

The Administrative Procedures Act (APA) requires that the RRC determine whether a rule “was adopted in accordance with Part 2” of G.S. 150B. G.S. 150B-21.9(a)(4). The APA further states:

An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

G.S. 150B-21.2(g). The statute defines “substantial change:

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

\* \* \* \* \*

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

Staff recommends that the Rules Review Commission object to the Rule because the Rule differs substantially from the text of as published in the North Carolina Register.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0204

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*In general, this rule seems confusing because of the overlapping use of the terms "operator," "applicant," and "licensee" and the terms "location" and "vacancy." In addition, provisions in Subparagraphs (d)(3) and (d)(1) do not seem to be consistent with those in Paragraph (d)(5).*

*Line 7 – add a comma after "information"*

*Line 9 – replace "must" with "shall"*

*Line 17 – what does "BEP" refer to?*

*Line 21 – add a comma after "seniority"*

*Line 21 – delete "and"*

*Line 21 – add a comma after "analysis"*

*Page 3, line 19 – revise as follows, if this is what is meant: "Sanitation points shall be awarded based on the sanitation grades for business enterprises facilities that were operated by an applicant, as follows:"*

*Page 3, lines 20-22 and 32-33 – do not capitalize the first word of these Parts*

*Page 3, lines 21 and 32 – add "and" after the semicolon*

*Page 3, line 31 – revise as follows: "Seniority points shall be awarded based on the number of years that an applicant has been an operator in the Business Management Program, as follows:"*

*Page 3, lines 32-33 – revise as follows: "seniority points per years in the program:"*

*Page 3, line 35 – page 4, line 3 – add "years" before the dash*

Jason Thomas  
Commission Counsel

Date submitted to agency: Tuesday, September 4, 2018

*Page 4, line 4 – replace “is defined as” with “means”*

*Page 4, line 5 – replace “must work” with “shall have worked”*

*Page 4, line 7 – replace “Program is” with “Program shall be”*

*Page 4, line 10 – replace “/” with a space*

*Page 4, line 14 – replace “require each operator to” with “Each operator shall”*

*Page 4, line 15 – move “for sales and gross profit” to immediately after “standard”*

*Page 4, lines 19-29 – do not capitalize the first word of these Parts*

*Page 5, line 1 – revise as follows: “The oral exam and interview shall be conducted and evaluated as follows:”*

*Page 5, line 2, 4, and 6 – replace the periods with semicolons*

*Page 5, lines 3, 5, and 15 – do not capitalize the first word of these Parts*

*Page 5, line 3 – add “the” before “interview”*

*Page 5, line 6 – add “and” after the semicolon*

*Page 5, line 15 – replace “Oral Exam part” with “oral exam”*

*Page 5, line 16 – add a period after “Committee” and mark the period after “interview” as deleted.*

*Page 5, lines 25-26 – will a total of two or three math questions required? If two, revise line 26 as follows: “math questions, at least one of which shall be a calculating...”*

*Page 6, line 11 – replace “/” with a space*

*Page 6, line 33 – replace “subparagraph (3)” with “Subparagraph (d)(3)”*

*Page 6, line 33 – capitalize “Rule”*

*Page 6, line 36 – delete “and so on”*

*Page 7, line 1 – replace “will” with “shall”*

*Page 7, lines 2, 8, 26, 27, and elsewhere – If “location” and “vacancy” (and any other term) mean the same thing as used in this Rule, choose one term and use it exclusively.*

*Page 7, line 3 – delete or define “as soon as possible”*

*Page 7, line 5 – replace “may” with “shall”*

*Page 7, line 6 – replace “will” with “shall”*

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

*Page 7, line 7 – replace “does” with “shall”*

*Page 7, line 11 – do not capitalize “operator agreement”*

*Page 7, line 12 – delete the comma*

*Page 7, line 13 – add “a” before “refresher”*

*Page 7, line 13 – what “course” is referred to here? Is such a course the subject of another rule?*

*Page 7, line 15 – replace “must” with “shall”*

*Page 7, lines 16-17 – replace “; otherwise,” with “or”*

*Page 7, line 17 – replace “is defined as” with “shall be”*

*Page 7, lines 19-25 – consider switched the order of Subparagraphs (d)(13) and (d)(14).*

*Page 7, line 21 – replace “subparagraph (3)” with “Subparagraph (d)(3)”*

*Page 7, line 23 – replace “on” with “of”*

*Page 7, line 24 – replace “operator; however, an operator” with “operator. An operator”*

*Page 7, line 24 – delete “at least”*

*Page 7, line 28 – replace “is defined as” with “means”*

*Page 7, line 28 – replace “sibling. This definition includes all step, half and in-law” with “sibling, including step, half, and in-law”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 63C .0204 is amended with changes as published in 32:22 NCAC 2392 as follows:

2  
3 **10A NCAC 63C .0204 FILLING OF VACANCIES**

4 (a) The Division shall make available a listing of available Business Enterprises facilities to all licensees. Transfers  
5 and promotions shall be based on the following procedures:

6 (1) The Division shall send a notice of available facilities to all operators and licensees. The notice  
7 shall provide a description of the vacancy, who to contact for more information and the deadline for  
8 receipt of application.

9 (2) Applicants must not owe any money to the Business Enterprises Program to be eligible to apply for  
10 vacancies.

11 (3) All applications shall be received by the Division no later than the deadline date identified in the  
12 notice. If not received by the Division by the deadline, the applicant shall be ineligible to interview  
13 for the vacancy.

14 (b) ~~Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief~~  
15 ~~of Business Enterprises. The Interview Committee shall consist of:~~

16 (1) ~~the chief of the Business Enterprises Program or his or her designee;~~

17 (2) ~~an area rehabilitation supervisor or BEP representative;~~

18 (3) ~~the vice-chair of the Elected Committee of Blind Vendors or ECBV designee; and~~

19 (4) ~~the chair of the transfer and promotion committee or ECBV designee.~~

20 (c) ~~Transfers and promotions shall be based on the following procedures: seniority and performance. The Business~~  
21 ~~Enterprises representative shall calculate the applicant's points for sanitation, seniority and financial analysis and~~  
22 ~~operating standards and inform the applicant of his or her point total ten business days prior to the interview. The~~  
23 ~~applicant shall have two business days to review the point total and request any adjustments.~~

24 (1) ~~The Division shall send a notice of available facilities to all operators and licensees on the last 10~~  
25 ~~working day of the month. The notice shall provide a description of the vacancy and who to contact~~  
26 ~~for more information.~~

27 (2) ~~All applications shall be post marked by the 10th of the month following the notice and mailed to~~  
28 ~~the office of the Chief of Business Enterprises.~~

29 (3) ~~The Interview Committee shall interview all applicants on the second Friday of the month which~~  
30 ~~follows the application deadline.~~

31 (4) ~~At least 10 working days prior to the interview, the Business Enterprises Counselor who works with~~  
32 ~~the applicant shall calculate the applicant's points for sanitation, seniority, Financial~~  
33 ~~Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant~~  
34 ~~of his point total. The applicant shall have five working days to review the point total and request~~  
35 ~~any adjustments.~~

36 (5) ~~After adding together the points from the sanitation, seniority, Financial Analysis/Operating~~  
37 ~~Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3),~~



1                   ~~(4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above~~  
2                   ~~60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to~~  
3                   ~~accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on.~~  
4                   ~~In the case of an exact tie, the applicant with the most time in the Business Enterprises Program~~  
5                   ~~shall be awarded the location.~~

6                   ~~(6) Applicants shall be notified as soon as possible after their interview whether or not they have been~~  
7                   ~~awarded a location. This notification shall be by telephone and followed up in writing.~~

8                   ~~(7) Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division~~  
9                   ~~shall agree to a different time frame if adhering to the 30 day time frame would cause a hardship to~~  
10                  ~~the applicant awarded the facility. The location shall not be filled for 15 working days following~~  
11                  ~~the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall~~  
12                  ~~not be filled until the appeal is resolved. If there is only one applicant for a location, the 15 day~~  
13                  ~~waiting period shall not apply.~~

14                  ~~(8) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the~~  
15                  ~~last two years, and the applicant did not meet his financial analysis and operating standards for the~~  
16                  ~~last 12 months that his agreement was in effect, the applicant shall repeat the necessary on the job~~  
17                  ~~training. The Interview Committee may also recommend refresher course training to assure qualified~~  
18                  ~~management.~~

19                  ~~(9) Licensees/operators not selected may file an administrative appeal as provided for in Subchapter~~  
20                  ~~63C Section .0400. The fifteen day limit to file an appeal shall begin from the date the~~  
21                  ~~licensee/operator is informed by telephone of the results of the award.~~

22                  ~~(10) An applicant must have operated a Business Enterprises location for six months prior to the cut off~~  
23                  ~~date for calculating financial performance according to standards to be considered an operator,~~  
24                  ~~otherwise, the operator shall be in licensee status. The cut off date is defined as the 12 month period~~  
25                  ~~ending with the last day of the same month in which the vacancy is advertised.~~

26                  ~~(11) If an operator leaves the Business Enterprises Program and then applies for a location within 12~~  
27                  ~~months of leaving, his financial performance according to standards for the 12 months prior to his~~  
28                  ~~leaving shall be used to calculate points in the Financial Performance Section.~~

29                  ~~(12) Financial analyses of facilities shall be done every two years. The analysis shall be on the facility~~  
30                  ~~not the operator; however, an operator may request a new analysis after at least four months in the~~  
31                  ~~new facility. If an applicant's financial analysis is less than two years old and the applicant's~~  
32                  ~~performance is neither above 100 percent nor below 85 percent on either measure, the financial~~  
33                  ~~analysis is current.~~

34                  ~~(13) An applicant who does not hold the required level of license for the vacancy may be awarded the~~  
35                  ~~facility contingent upon successfully completing the required training. Applicants who hold the~~  
36                  ~~required level of license but have not operated a facility at that level for at least two years shall~~

1 complete refresher on the job training if the applicant did not meet his financial analysis and  
2 operating standards for the last 12 months that his agreement was in effect.

3 (14) ~~An operator may not sit on the Interview Committee for a location for which he/she is applying or  
4 if a member of his/her immediate family has applied for a vacant facility. For this purpose  
5 immediate family is defined as spouse, parent, child, brother and sister. Also included are the step,  
6 half and in law relationships. If the Vice Chairman and the Chairman of the Elected Committee of  
7 Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from  
8 sitting on the Interview Committee under this Rule, those three must pick another Elected  
9 Committee of Vendors member to sit on the Interview Committee.~~

10 (15) ~~The schedule for awarding vacancies may be changed to accommodate holidays, too many  
11 applications to process in one day, or at any time necessary due to program conflicts as determined  
12 by the chief of Business Enterprises and the Vice Chairman of the Elected Committee of Vendors.  
13 All applicants shall be notified in writing of the date, time and place of their interview.~~

14 (16) ~~Applicants shall be reimbursed for their expenses to come to the interview at the state's per diem  
15 rates. The Business Enterprises Program shall only reimburse for two interviews per year. After  
16 that, applicants shall bear their own expenses for coming to interviews. Licensees who have active  
17 rehabilitation cases shall be reimbursed through the rehabilitation program.~~

18 (d) The Division shall use the following criteria in determining points:

19 (1) Sanitation:

20 (A) ~~Ten Five point points~~ maximum;

21 (B) One point for each sanitation grade point above ninety;

22 (C) Sanitation grade ~~to be arrived at by averaging~~ shall be the average of all sanitation scores  
23 received during ~~the last previous~~ two years;

24 (D) Five points shall be subtracted for any adjusted B-grade in the last two years;

25 (E) ~~The Business Enterprises Counselor shall determine an adjusted grade by adding back in  
26 any points subtracted for deficiencies over which the operator has no control. The operator  
27 shall inform Business Enterprises Counselor when an inspection has occurred so he can  
28 review the inspection and adjust the grade if needed. The operator shall make sure the  
29 Business Enterprises Counselor has copies of every sanitation inspection form from the  
30 relevant period so that he or she can calculate an accurate grade.~~

31 (2) Seniority:

32 (A) Five ~~point points~~ maximum;

33 (B) Seniority points shall be awarded as follows:

34 Years in Business Enterprises Program – Points

35 0 to 4.99 - 0 points

36 5 to 9.99 - 1 point

37 10 to 14.99 - 2 points

1 15 to 19.99 - 3 points

2 20 to 24.99 - 4 points

3 25 and over - 5 points

4 (C) Seniority is defined as the amount of time in yearly increments an individual has been  
5 working in the Business Enterprises Program as an operator. An operator must work 51  
6 percent of the working business days in a month to receive credit for that month. The  
7 cutoff date for accruing time in the Program is the end of the month when the vacancy is  
8 advertised. Business Enterprises operators shall receive credit for one year of seniority for  
9 any combined 12-month period.

10 (3) Performance According according to Financial financial Analysis analysis/and Operating operating  
11 Standards standards: Operating standards are determined by tabulating all the invoices for purchases  
12 for resale for each facility for a period of three months. The optimum sales and gross profit  
13 percentage is determined by computing the maximum potential for sales and gross profit without  
14 consideration for theft, waste or poor management. require Each each operator is required to  
15 maintain 85 percent of the optimum standard established for each facility for sales and gross profit.  
16 ~~Eighty five percent of the optimum sales and gross profit percentage is considered the operating~~  
17 ~~standard for each facility.~~

18 (A) 50 Points Maximum;

19 (B) Applicants shall receive ~~20~~ 15 points for meeting or exceeding 85 percent of their sales  
20 standard;

21 (C) Applicants shall receive ~~20~~ 15 points for meeting or exceeding 85 percent of their gross  
22 profit percentage standard;

23 (D) Applicants shall receive five points for meeting or exceeding ~~92.5~~ 90 percent of their sales  
24 optimum;

25 (E) Applicants shall receive five points for meeting or exceeding ~~92.5~~ 90 percent of their gross  
26 profit percentage optimum.

27 (F) Applicants shall receive five points for meeting or exceeding 95.01 percent of their sales  
28 optimum; and

29 (G) Applicants shall receive five points for meeting or exceeding 95.01 percent of their gross  
30 profit percentage optimum.

31 (4) ~~Customer and Building Management Relations:~~

32 (A) ~~Five points shall be deducted for each written site management complaint in the past two~~  
33 ~~years, up to a maximum of 10 points.~~

34 (B) ~~If the applicant has more than three written site management complaints, he shall not be~~  
35 ~~considered for the award. No site management complaint that is more than three years old~~  
36 ~~may be used against an operator. Site management is defined as the property official for~~  
37 ~~the property on which a BEP facility is located.~~

1           ~~(5)~~(4) Oral Exam/Interview:

2           (A)       ~~30~~ 40 points maximum.

3           (B)       Interview shall be face to face ~~(no conference calls)~~. A conference call shall not be  
4           considered face-to-face.

5           (C)       All ~~Each~~ applicants applicant shall be interviewed ~~complete~~ the interview process to be  
6           considered for award of the facility.

7           ~~(D)~~       The Interview Committee shall consist of:

8           (i)       ~~The Chief of Business Enterprises, or Deputy Chief or Assistant Director of~~  
9           ~~Programs and Facilities as designated by Chief,~~

10          (ii)       ~~The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the~~  
11          ~~vacancy occurs, and~~

12          (iii)       ~~The Vice Chairman of the Elected Committee of Vendors or the Chairman in his~~  
13          ~~absence, or in the absence of the Chairman, the Chairman of the Transfer and~~  
14          ~~Promotion subcommittee.~~

15          ~~(E)~~(D)       The Oral Exam part shall consist of ~~10~~ 10 - 20 questions drawn either from a pool of  
16          standard questions ~~or~~ developed by the Interview Committee prior to the interview. The  
17          oral exam questions shall relate to any special needs of the vacant facility as well as to  
18          standard responsibilities and knowledge areas of Business Enterprises operators. Each  
19          member of the Interview Committee shall evaluate the applicant's response to each  
20          question in the oral exam. The applicant shall receive one point by demonstrating basic  
21          knowledge, the applicant shall receive one and one half points for demonstrating above  
22          average knowledge, and the applicant shall be awarded two points for demonstrating  
23          exceptional knowledge for each interview question. There shall be at least one question  
24          involving a calculation and a talking calculator shall be provided, although applicants may  
25          bring their own. The oral exam shall yield a possible 20 points. There shall be at least two  
26          math questions; at least one calculating math question. The Interview Committee shall  
27          also develop desired answers for the interview questions prior to the interview.

28          (F)       The interview part shall consist of a variety of questions in a give and take format. Each  
29          member of the Interview Committee shall evaluate the applicant's response to the interview  
30          questions and shall award up to 10 additional points based on the applicant's previous food  
31          service experience, knowledge and financial performance. If the applicant meets the  
32          requirements for the facility, the applicant shall receive five additional points. If the  
33          applicant's qualifications exceed the requirements of the facility, he may be awarded up to  
34          ten additional points. The interview shall include the following elements: questions related  
35          to business philosophy to promote general discussion to enable the interview panel to  
36          evaluate the applicant's expertise, maturity, experience and ability; a discussion of any  
37          related work experience outside the Business Enterprises Program; at least two business

1 math questions. Since points are awarded for seniority, time in the Business Enterprises  
2 Program shall not be considered as a reason to award points; however, relevant work  
3 experience in the Business Enterprises Program may be discussed and taken into  
4 consideration. Applicants may bring letters of recommendation, certificates, and other  
5 documents that would aid the Interview Committee in awarding its discretionary points.

6 (G) — Each interviewer shall award discretionary points individually and the total score of Oral  
7 Exam and Interview points from each interviewer shall be averaged and added to the  
8 applicant's points from the other Sections.

9 **(6)(5) Licensees and trainees:**

10 (A) A licensee who has no previous experience in the North Carolina Business Enterprises  
11 Program shall be assigned 35 40 points in the Financial financial Analysis analysis/and  
12 Operating operating Standards standards category. If the licensee licensee's current scores  
13 score 90 percent or above on the National Restaurant Association's ServSafe exam is 90  
14 percent or greater, he/she an additional shall be awarded three points shall be added in the  
15 sanitation category.

16 (B) — A licensee with previous Business Enterprises experience shall be assigned 35 points in  
17 the Financial Analysis/Operating Standards category. Previous sanitation records shall be  
18 considered, if available; or the applicant may take the National Restaurant Association's  
19 ServSafe exam. If the licensee scores 90 percent or above on the ServSafe exam, he/she  
20 shall be given three points in the Sanitation Section.

21 (C) — Applicants shall have satisfactorily completed Level I training or have a Level I license to  
22 be interviewed. The four levels of Business Enterprises facilities are defined as follows:  
23 Level I has no cooking or on site food preparation and includes only service via vending  
24 machines or over the counter service including snacks, candy, pre packaged sandwiches,  
25 coffee, and assorted beverages. Level II service is similar to a deli operation where hot  
26 and cold food is prepared on site. Level III service includes all of the above with the  
27 addition of a grill and fryer. Level IV service consists of full service cafeteria style  
28 facilities. An applicant shall score at least 60 total points to be awarded a location. If the  
29 applicant scores at least 55 points but less than 60 points, the interview panel may make a  
30 conditional award if the panel agrees it is in the best interest of the Business Enterprises  
31 Program.

32 (6) An operator who is currently managing a Business Enterprises military dining facility shall be  
33 assigned 50 points in subparagraph (3) of this rule plus any seniority points.

34 (7) After calculating the point total of this Rule for each applicant, the applicant with the highest point  
35 total shall be awarded the vacancy. If the applicant with the highest point total declines to accept  
36 the location, it shall be offered to the applicant with the next highest point total and so on. In the

1 case of an exact tie, the seniority points of the two applicants will be deducted and the total points  
2 recalculated. The applicant with the recalculated highest points shall be awarded the location.

3 (8) Applicants shall be notified by telephone as soon as possible after the conclusion of interviews  
4 whether or not they have been awarded a location. This notification shall be followed up in writing.

5 (9) The location may not be filled for 15 working days following the award to allow time for  
6 administrative appeals to be filed. If an appeal is filed, the location will not be filled until the appeal  
7 is resolved. If there is only one applicant for a location, the 15-day waiting period does not apply.

8 (10) Upon being awarded a location, the applicant shall have 20 business days to fill the vacancy. The  
9 Division and awarded operator shall agree to a different time frame if adhering to the 20 business  
10 days' time frame would cause a hardship.

11 (11) If an applicant is awarded a facility and has not had an Operator Agreement with the Division in the  
12 last two years, and the applicant did not meet his or her financial analysis and operating standards  
13 for the last 12 months that the agreement was in effect, the applicant shall complete refresher course  
14 training to assure qualified management.

15 (12) An applicant must have operated a Business Enterprises facility for twelve months prior to the cut-  
16 off date for calculating financial performance according to standards to be considered an operator,  
17 otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period  
18 ending with the last day of the same month in which the vacancy is advertised.

19 (13) If an operator who is not currently operating a Business Enterprises facility applies for a vacancy  
20 within 12 months of leaving a facility, the financial performance standards for the prior facility shall  
21 be used for subparagraph 3 of this Rule if the financial performance analysis was completed within  
22 the required three-year period.

23 (14) Financial analyses of facilities shall be completed every three years. The analysis shall be on the  
24 facility, not the operator; however, an operator may request a new analysis after at least nine months  
25 in the new facility.

26 (15) An applicant shall not sit on the Interview Committee for a location for which he or she is applying  
27 or if a member of his or her immediate family has applied for a vacant facility. Immediate family  
28 is defined as a spouse, parent, child, or sibling. This definition includes all step, half and in-law  
29 relationships. If a member of the Interview Committee is disqualified from serving as a result of this  
30 rule, the Chair and Vice Chair shall jointly select a member of the ECBV to sit on the Interview  
31 Committee.

32 (16) Applicants shall be reimbursed for their expenses to come to the interview at the state's per diem  
33 rates. The Business Enterprises Program shall only reimburse for three interviews per year. After  
34 that, applicants shall bear their own expenses for coming to interviews. Applicants who have active  
35 rehabilitation cases shall be reimbursed through the rehabilitation program.

36  
37 *History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*

1                   *Eff. October 1, 1978;*  
2                   *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*  
3                   *February 1, 1981;*  
4                   *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
5                   *23, ~~2015~~ 2015;*  
6                   *Amended Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0205

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 4 – replace “must” with “shall”*

*Line 4 – replace “a contractual” with “an”*

*Line 6 – replace “the” with “a”*

*Line 7 – delete the comma*

*Lines 10, 11, 12, 16, and 21 – restore the definite articles (“the” and “that”) at the beginning of these lines*

*Lines 10 and 11 – replace “as contained in” with “required by”*

*Lines 12-13 – delete the brackets*

*Lines 16, 18, and 21 – replace “shall” with “will”*

*Line 19 – capitalize “State”*

*Line 20 – replace “laws or regulations” with “laws, rules, or regulations”*

*Line 21 – replace “which” with “that”*

*Lines 21-22 – delete “the Division, with ECBV active participation, has determined”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018



1 10A NCAC 63C .0205 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0205 CONTRACTUAL AGREEMENT BETWEEN DIVISION AND OPERATOR**

4 (a) Each licensee or operator who accepts a Business Enterprises assignment must enter into a contractual operating  
5 agreement with the Division upon initial placement and upon subsequent reassignment.

6 (b) When a permit or contract with the host facility is developed, it ~~A copy of the permit or contract with the sponsor~~  
7 ~~of the site upon which the Business Enterprises facility is located~~ shall become a part of the operator agreement, and  
8 the operator shall conduct the business in accordance with the provisions of that permit or contract.

9 (c) The operator agreement shall include provisions which specify:

- 10 (1) ~~the~~ responsibilities of the licensed operator as contained in the rules in this Subchapter;
- 11 (2) ~~the~~ responsibilities of the Division as contained in the rules in this Subchapter;
- 12 (3) ~~that~~ the licensed operator will receive the net proceeds [in accordance with ~~45~~ 34 CFR ~~1369.1(k)~~  
13 395.9] from the Business Enterprises facility he/~~she~~ he or she operates in accordance with Section  
14 .0700 of this Subchapter;
- 15 (4) ~~the right of the operator~~ operator's right to terminate the agreement at any time;
- 16 (5) ~~that the agreement will be shall terminated terminate~~ upon termination of the permit or contract with  
17 ~~the sponsor of the site upon which the Business Enterprises facility is located;~~ host facility;
- 18 (6) that the agreement ~~will be shall terminated terminate~~ upon failure of the licensed operator to operate  
19 the Business Enterprises facility in accordance with the agreement or applicable federal, state, or  
20 local laws or regulations;
- 21 (7) ~~that~~ the agreement ~~will shall be terminated terminate~~ upon the closing of a facility which the  
22 ~~Division~~ Division, with ECBV active participation, has determined offers no possibility of being  
23 profitable.

24

25 *History Note:* Authority G.S. 111-27; 34 C.F.R. 395.1; 34 C.F.R. 395.3; 20 U.S.C. sec. 107;

26 *Eff. October 1, 1978;*

27 *Amended Eff. August 1, 2002; February 1, 1984; February 1, ~~1983~~. 1983;*

28 *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0206

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 6 replace "program or by" with "program, by"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0206 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0206 CONFIDENTIAL INFORMATION**

4 All information and records pertaining to ~~handicapped persons served by this program~~ participants in the Business  
5 Enterprises Program shall be ~~considered~~ confidential and may not be revealed except in the administration of the  
6 program or by the consent of the ~~handicapped person.~~ participant, or as otherwise required by law.

7

8 *History Note: Authority G.S. 111-27; 34 C.F.R. 361.49; 20 U.S.C. Sec. 107a et seq., as amended;*

9

*Eff. October 1, 1978;*

10

*Recodified from .0409(f) effective May 30, 1984;*

11

*Amended Eff. February 1, ~~1986.~~ 1986.*

12

*Readopted Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0302

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 1 – add “through readoption” after “repealed”*

*Line 3 – add the Rule citation and title are missing.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0302 is repealed as published in 32:22 NCR 2392 as follows:

2

3 *History Note:* Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107;

4 Eff. February 1, 1976;

5 Readopted Eff. November 16, 1977;

6 Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; October 1, 1978;

7 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November

8 ~~23, 2015, 2015;~~

9 Repealed Eff. \_\_\_\_\_.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0401

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Repeal this Rule entirely – it does not establish and requirement or confer any benefit on anyone.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0401 is readopted as published in 32:22 NCR 2392 as follows:

2

3

**SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE**

4

**10A NCAC 63C .0401 PURPOSE**

6 The purpose of the administrative appeal procedure is to provide a ~~an~~ means of appeal process to each ~~operator/~~  
7 ~~licensee operator or licensee or the ECBV~~ who is dissatisfied with an action of the Division arising from the operation  
8 or administration of the Business Enterprises Program.

9

10 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107;*

11 *Eff. October 1, 1978;*

12 *Amended Eff. August 1, 2002; May 1, 1996; February 1, ~~1984~~ 1984;*

13 *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0402

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 5 – capitalize “Rule”*

*Lines 9-10 – delete Paragraph (c) entirely – it is an unnecessary repetition of 34 CFR 395.13. If you wish, you may incorporate it by reference pursuant to G.S. 150B-21.6.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018



1 10A NCAC 63C .0402 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0402 POLICY**

4 (a) Every ~~operator/licensee~~ operator or licensee or the ECBV has the right to present a problem or appeal free from  
5 interference, restraint, coercion, discrimination, or reprisal. This ~~policy rule~~ shall be covered fully during orientation  
6 procedures for new ~~operators/licensee~~ operators or licensees.

7 (b) When presenting an appeal, an ~~operator/licensee~~ operator or licensee or the ECBV may be accompanied by a  
8 person or persons of his or her choice.

9 (c) The filing of a complaint with the Division shall indicate consent by the blind ~~operator/licensee~~ operator or licensee  
10 or the ECBV for the release of such information as is necessary for the conduct of the administrative appeal.

11

12 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec 107;*

13 *Eff. October 1, 1978;*

14 *Amended Eff. February 1, 1984, February 1, 1981;*

15 *Recodified Paragraph (f) to Rule .0212 Eff. May 30, 1984;*

16 *Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, ~~1986.~~ 1986;*

17 *Readopted Eff.\_\_\_\_\_.*

RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0403

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
- X Failure to comply with the APA
- Extend the period of review

COMMENT: Staff recommends that the Rules Review Commission object to the Rule because it differs substantially from the proposed rule.

On page 1, lines 4-12, Paragraph (a), the Rule eliminates the grievance procedure that precedes a request for a formal evidentiary hearing.

The Administrative Procedures Act (APA) requires that the RRC determine whether a rule "was adopted in accordance with Part 2" of G.S. 150B. G.S. 150B-21.9(a)(4). The APA further states:

An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

G.S. 150B-21.2(g). The statute defines "substantial change:

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

\* \* \* \* \*

Jason Thomas  
Commission Counsel  
Issued June 7, 2018

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

Staff recommends that the Rules Review Commission object to the Rule because the Rule differs substantially from the text of as published in the North Carolina Register.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0403

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 12 – replace “when” with “if”*

*Line 21 – delete “This is not a mandatory review.”*

*Line 30 – replace “chooses to ask” with “asks”*

*Line 32 – replace “event/incident” with “event or incident”*

*Page 2, line 19 – replace “event/incident” with “event or incident”*

*Page 2, lines 27-28 – replace as follows: “Article 3, to the extent that Article does not conflict with federal law or regulation.” Do you really need this limitation? Consider deleting it.*

*Page 3, line 9 – delete the comma*

*Page 3, line 28 – replace “which” with “that”*

*Page 3, lines 34-36 – what specific powers are referenced here? What specific laws authorize these powers? This sentence is ambiguous.*

*Page 4, line 5 – add a comma after “evidence”*

*Page 4, line 27 – delete the comma after “hearing”*

*Page 4, line 27 – capitalize “State”*

*Page 4, line 28 – delete the comma*

*Page 4, line 33 – replace “dispute(s)” with “dispute”*

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0403 is readopted with changes as published in 32:22 NCR 2392 as follows:

2  
3 **10A NCAC 63C .0403 PROCEDURE**

4 (a) ~~The operator/licensee operator or licensee or the ECBV shall submit the grievance in writing to the Division and~~  
5 ~~discuss the problem with the Division staff person taking the action with which the operator or licensee or the ECBV~~  
6 ~~is dissatisfied and request specific action in writing to resolve the grievance. This The written grievance and requested~~  
7 ~~resolution shall be submitted to the Division and the discussion shall be held within 15 working business days of the~~  
8 ~~occurrence of the action challenged by the operator. operator or licensee or the ECBV. The operator/ licensee operator~~  
9 ~~or licensee or the ECBV shall receive a response within five working business days following the discussion. Any~~  
10 ~~decision made by agency personnel at this step shall be subject to supervisory review and approval. If the grievance~~  
11 ~~is not received within 15 business days of the occurrence of the action challenged, the grievance will be invalid and~~  
12 ~~the Division's action final. may file a complaint with the Division requesting a full evidentiary hearing when~~  
13 ~~dissatisfied with an action of the Division arising from the operation or administration of the Business Enterprises~~  
14 ~~Program.~~

15 (b) ~~If the complaint is not resolved and the The operator/licensee operator or licensee or the ECBV is not satisfied~~  
16 ~~with the outcome of Paragraph (a) of this Rule, he or she shall have 15 five working business days to may ask for a~~  
17 ~~review by the operator relations committee in writing. Within five working business days after asking for a review,~~  
18 ~~the operator/licensee operator or licensee or the ECBV shall be notified of the date of the hearing, which shall be held~~  
19 ~~within 2510 working business days after the operator's/licensee's operator's or licensee's request for a hearing. The~~  
20 ~~committee shall render its decision within 20 five working business days after the hearing, prior to requesting an~~  
21 ~~evidentiary hearing. This is not a mandatory review.~~

22 (c) ~~If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator/ licensee operator or~~  
23 ~~licensee or the ECBV or the Division staff person responsible for the initial action, the matter may be referred by the~~  
24 ~~operator/ licensee operator or licensee or the ECBV or the Division staff person to the director of the Division. Any~~  
25 ~~request for review shall be submitted within 1 five working business days after the operator relations committee has~~  
26 ~~presented its recommendation. The party requesting the referral shall provide a written summary of the specific facts~~  
27 ~~of the complaint copy of the decision from the operators relations committee and document the request for specific~~  
28 ~~action requested to resolve the grievance, copies of which shall be provided at the same time to all other parties~~  
29 ~~concerned. The director shall make the decision for the Division within 15 five working business days, and his this~~  
30 ~~decision shall be announced immediately to all parties concerned. chooses to ask for a review by the operator relations~~  
31 ~~committee prior to requesting an evidentiary hearing, the written grievance and requested resolution shall be submitted~~  
32 ~~to the operator relations committee within 15 business days after the event/incident occurred that is being challenged~~  
33 ~~by the operator or licensee or the ECBV.~~

34 (d) ~~If the complaint is not resolved and the operator/licensee is not satisfied with steps of Paragraphs (a) through (e)~~  
35 ~~of this Rule, then the operator/ licensee operator or licensee or the ECBV may file a complaint with the Division~~  
36 ~~requesting a full evidentiary hearing. Within five business days after asking for a review, the operator or licensee or~~  
37 ~~ECBV shall be notified of the date of the hearing, which shall be held within 10 business days after the operator's or~~

1 licensee's or the ECBV's request for a hearing. The committee shall render its decision within five business days  
2 after the hearing.

3 (e) If a blind operator/ licensee operator or licensee or the ECBV requests a full evidentiary hearing, such request  
4 shall be made within 15 working business days after the director's adverse direction rendered through the procedures  
5 in this Rule, the decision reached by the operator relations committee is not satisfactory to the operator or licensee or  
6 the ECBV or the Division staff person responsible for the initial action, the matter may be referred by the operator or  
7 licensee or the ECBV or the Division staff person to the director of the Division. This is not a mandatory review.  
8 Any request for review shall be submitted within five business days after the operator relations committee has  
9 presented its recommendation. The party requesting the review shall provide a copy of the decision from the operators  
10 relations committee and document the specific action requested to resolve the grievance, copies of which shall be  
11 provided at the same time to all other parties concerned. The director shall make the decision for the Division within  
12 five business days, and this decision shall be announced immediately to all parties concerned.

13 (f) A blind operator/ licensee operator or licensee or the ECBV shall request a full evidentiary hearing in writing.  
14 This request shall be transmitted to the director of the Division personally or electronically or by certified mail, return  
15 receipt requested, transmitted through the Elected Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2).  
16 This hearing shall be held in accordance with G.S. 150B, Article 3, the extent that such article does not conflict with  
17 these Rules pertaining to grievance procedures or any federal law or regulation. Requests for a full evidentiary hearing  
18 shall be submitted by the operator or licensee or ECBV in writing to the Division. The written complaint and request  
19 shall be submitted to the Division within 15 business after the event/incident occurred that is challenged by the  
20 operator or licensee or the ECBV.

21 (g) A blind operator/ licensee operator or licensee or the ECBV shall be entitled to legal counsel or other representation  
22 in a full evidentiary hearing. The Division shall reimburse the operator for costs of legal counsel at a rate of 50% of  
23 the total amount not to exceed a total expenditure by the Division of one thousand five hundred dollars (\$1,500). This  
24 expenditure is based on the availability of funds. This request shall be transmitted to the director of the Division  
25 personally or electronically or by certified mail, return receipt requested, transmitted through the Elected Committee  
26 of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall be held in accordance with G.S. 150B,  
27 Article 3, the extent that such article does not conflict with these Rules pertaining to grievance procedures or any  
28 federal law or regulation.

29 (h) Reader services or other communication services shall be arranged for the A blind operator/ licensee operator or  
30 licensee or the ECBV should he so if request requested. Transportation costs and per diem shall be provided also to  
31 the blind operator/ licensee operator or licensee or the ECBV during the pendency of the evidentiary hearing, if the  
32 location of the hearing is in a city other than the legal residence of the operator/licensee. operator and licensee, shall  
33 be entitled to legal counsel or other representation in a full evidentiary hearing at the expense of the operator or licensee  
34 or ECBV.

35 (i) The hearing shall be held at a time and place convenient and accessible to Reader services or other communication  
36 services shall be arranged for the blind operator/ licensee operator or licensee or the ECBV requesting a full  
37 evidentiary hearing, if requested. The Transportation costs and per diem shall be provided also to the blind operator/

1 licensee operator or licensee or the ECBV shall be entitled to have the hearing held in the county of his residence  
2 unless he waives this right. A hearing held during regular Division working business hours shall be deemed among  
3 the convenient times. The hearing shall be scheduled by the Division within 15 working business days of its receipt  
4 of such a request, unless the Division and the blind operator/ licensee operator or licensee or the ECBV mutually, in  
5 writing, agree to some other period of time. The Division shall notify the blind operator/ licensee operator or licensee  
6 or the ECBV in writing of the time and place fixed for the hearing and of his their right to be represented by legal or  
7 other counsel. The Division shall provide the blind operator/ or licensee or the ECBV a copy of the hearing procedures  
8 and other relevant information necessary to enable him to prepare his case for the hearing, during the pendency of the  
9 evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the operator or licensee.

10 (j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human  
11 Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with  
12 the Division action which is at issue in the hearing or with the administration or operation of the Randolph Sheppard  
13 Business Enterprises Program. shall be held at a time and place convenient and accessible to the blind operator or  
14 licensee or the ECBV requesting a full evidentiary hearing. The blind operator or licensee or the ECBV shall be  
15 entitled to have the hearing held in the county of his or her residence unless he or she waives this right. A hearing  
16 held during regular Division business hours shall be deemed among the convenient times. The hearing shall be  
17 scheduled by the Division within 15 business days of its receipt of such a request, unless the Division and the blind  
18 operator or licensee or the ECBV mutually, in writing, agree to some other period of time. The Division shall notify  
19 the blind operator or licensee or the ECBV in writing of the time and place fixed for the hearing and of their right to  
20 be represented by legal or other counsel. The Division shall provide the blind operator or licensee or the ECBV a copy  
21 of the hearing procedures and other relevant information necessary to enable him or her to prepare his or her case for  
22 the hearing.

23 (k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient  
24 record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding  
25 officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the  
26 conduct of the hearing, at the hearing, to be appointed by the Secretary of the Department of Health and Human  
27 Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with  
28 the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard  
29 Business Enterprises Program.

30 (l) Both the The blind operator/ licensee operator or licensee or the ECBV operator/licensee and the Division shall be  
31 entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such  
32 examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing  
33 on the issue. presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient  
34 record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding  
35 officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the  
36 conduct of the hearing.



- 1 (m) ~~All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and~~  
2 ~~provided to the other party. All such documents and other evidence submitted shall be open to examination by the~~  
3 ~~parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues. The blind~~  
4 ~~operator or licensee or the ECBV and the Division shall be entitled to present their case by oral or documentary~~  
5 ~~evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be~~  
6 ~~required for a full and true disclosure of all facts bearing on the issue.~~
- 7 (n) ~~A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay~~  
8 ~~all transcript costs and shall provide the blind operator/ licensee operator or licensee or the ECBV with at least one~~  
9 ~~copy of the transcript. All papers and documents introduced into evidence at the hearing shall be filed with the~~  
10 ~~presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to~~  
11 ~~examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of~~  
12 ~~the issues.~~
- 13 (o) ~~The A transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the~~  
14 ~~exclusive record for decision. be made of the oral evidence and shall be made available to the parties. The Division~~  
15 ~~shall pay all transcript costs and shall provide the blind operator or licensee or the ECBV with at least one copy of the~~  
16 ~~transcript.~~
- 17 (p) ~~The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing,~~  
18 ~~and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and~~  
19 ~~conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any~~  
20 ~~remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working business~~  
21 ~~days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/ licensee~~  
22 ~~operator or licensee or the ECBV and the division. transcript of testimony, exhibits, and all papers and documents~~  
23 ~~filed in the hearing shall constitute the exclusive record for decision.~~
- 24 (q) ~~If the dispute(s) is not resolved to the satisfaction of a blind operator/ licensee operator or licensee or the ECBV~~  
25 ~~after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of~~  
26 ~~Education for the convening of an arbitration panel. The decision of the presiding officer shall set forth the principal~~  
27 ~~issues and relevant facts adduced at the hearing, and the applicable provisions in law, federal regulations, and state~~  
28 ~~rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis~~  
29 ~~therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision~~  
30 ~~shall be made within 15 business days after the receipt of the official transcript. The decision shall be mailed promptly~~  
31 ~~to the blind operator or licensee or the ECBV and the division.~~
- 32 (r) ~~The results of the arbitration shall be considered the final agency action and the operator/ licensee operator or~~  
33 ~~licensee or the ECBV shall have exhausted his administrative remedies. If the dispute(s) is not resolved to the~~  
34 ~~satisfaction of a blind operator or licensee or the ECBV after provision of a full evidentiary hearing, an appeal may~~  
35 ~~be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.~~
- 36 (s) ~~The decision of the arbitration panel shall be subject to appeal and review as a final agency action for the purposes~~  
37 ~~of 5 U.S.C. Chapter 7.~~

1 *History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*  
2 *Eff. October 1, 1978;*  
3 *Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983;*  
4 *December 1, ~~1981~~ 1981;*  
5 *Readopted Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0501

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 1 – add “repealed through” before “readoption”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0501 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **SECTION .0500 - ELECTION: ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON THE**  
4 **STAND PROGRAM**

5

6 **10A NCAC 63C .0501 ELECTION**

7

8 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107;*

9 *Eff. October 1, 1978;*

10 *Amended Eff. August 1, 2002; May 1, 1996; February 1, ~~1986~~ 1986;*

11 *Repealed Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0506

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 6 – replace “which” with “that”*

*Line 7 – capitalize “Program”*

*Line 8 – add a comma after “type”*

*Line 9 – do not capitalize “federal”*

*Line 13 – replace “which” with “that”*

*Line 33 – page 2, line 3 – properly indent these lines*

*Page 2, line 2 – capitalize “Paragraph” and “Rule”*

*Page 2, lines 5 – revise as follows: “the following standing subcommittees:”*

*Page 2, line 9 – replace “Elected Committee of Blind Vendors” with “ECBV”*

*Page 2, line 11 – delete “any”*

*Page 2, line 12 – replace “vacancy” with “vacancies”*

*Page 2, line 12 – replace “may be” with “is”*

*Page 2, line 13 – replace “any” with “an”*

*Page 2, line 17 – replace the comma with a semicolon*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0506 is readopted with changes as published in 32:22 NCR 2392 as follows:

2  
3 **10A NCAC 63C .0506 ORGANIZATION AND OPERATION**

4 ~~(a) The officers of the Elected Committee of Vendors shall be a chairman and a vice chairman. They shall be elected~~  
5 ~~by the Elected Committee of Vendors from among Elected Committee of Vendors members. The Division shall~~  
6 ~~provide for the biennial election of a State Elected Committee of Blind Vendors (ECBV) which, to the extent possible,~~  
7 ~~shall be fully representative of all blind licensees and operators in the Business Enterprises program on the basis of~~  
8 ~~such factors as geography and vending facility type with a goal of providing for proportional representation of blind~~  
9 ~~vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election~~  
10 ~~shall not be conditioned upon the payment of dues or any other fees.~~

11 ~~(b) Vacancies in any of the elective offices shall be filled by the Elected Committee of Vendors members for the~~  
12 ~~unexpired term. The ECBV membership shall be composed of operators who represent all licensees and operators in~~  
13 ~~the Business Enterprises Program, as elected based on the four geographic regions and the one federal region which~~  
14 ~~encompasses all federal facilities. Two representatives shall be elected from each designated ECBV region.~~

15 ~~(c) The chairman shall preside over all the meetings of the Elected Committee of Vendors. He shall appoint~~  
16 ~~subcommittees at such time as the business of the Elected Committee of Vendors may warrant, except for the Operator~~  
17 ~~Relations Committee which shall be elected by the Elected Committee of Vendors from its members. The chairman~~  
18 ~~shall appoint temporary replacements to this subcommittee as needed to fill any vacancy until a new member may be~~  
19 ~~elected. He shall also appoint a temporary replacement for any Operator Relations Committee member who has filed~~  
20 ~~an appeal and whose appeal is pending before the Operator Relations Committee. The chairman shall serve as~~  
21 ~~non-voting ex officio member of all subcommittees. The term of office for ECBV members shall be two years~~  
22 ~~beginning on April 1 following the election. Each region shall have one term expire in even-numbered years and one~~  
23 ~~term expire in odd-numbered years. **The ECBV members may serve unlimited terms.**~~

24 ~~(d) In the absence or disability of the chairman, the vice chairman shall assume all the duties of the chairman.~~  
25 ~~Unexpired terms in the elective offices shall be filled by majority vote of the ECBV. Filling an unexpired term on the~~  
26 ~~ECBV shall not be considered countable time toward the two-year term of office.~~

27 ~~(e) The meetings shall be conducted according to Roberts Rules of Order. The officers of the ECBV shall be a chair~~  
28 ~~and a vice-chair, as elected by the ECBV from among ECBV members.~~

29 ~~(f) A majority shall constitute a quorum. **Terms shall be limited to two consecutive two-year terms. The ECBV chair**~~  
30 ~~**and vice-chair may serve unlimited terms.**~~

31 ~~(g) The ECBV shall hold quarterly business meetings and at other times upon the call of the chair with majority~~  
32 ~~approval of the ECBV.~~

33 ~~(1) The chair shall provide the Business Enterprises Program with a written meeting agenda ten business days~~  
34 ~~before each meeting.~~

35 ~~(A) The chair shall preside over all business meetings of the ECBV.~~

36 ~~(B) The chair shall conduct meetings according to Roberts Rules of Order.~~

37 ~~(C) A majority shall constitute a quorum.~~

1           (D)     The chair shall create subcommittees as the business of the ECBV warrants, excluding those  
2                     subcommittees specifically required in paragraph (h) of this rule.

3           (E)     In the absence or disability of the chair, the vice-chair shall assume all the duties of the chair.

4     (h) The ECBV chair shall serve as a non-voting ex-officio member of all subcommittees. The ECBV shall maintain  
5     the following standing subcommittees as defined below ;Operator Relations Subcommittee, Transfer and Promotion  
6     Subcommittee and the Training and Retraining Subcommittee.

7           (1)     Operator Relations Subcommittee, whose function is to receive and transmit appeals at the verbal  
8                     or written request of an operator or licensee.

9           (A)     This subcommittee shall be elected by the Elected Committee of Blind Vendors from its  
10                    members.

11          (B)     The ECBV chair shall appoint temporary replacements to this subcommittee to fill any  
12                    vacancy until a new member may be elected.

13          (C)     The ECBV chair shall appoint a temporary replacement for any Operator Relations  
14                    Subcommittee member who has filed an appeal and whose appeal is pending before the  
15                    Operator Relations Subcommittee.

16          (2)     Transfer and Promotion Subcommittee, whose function is to actively participate with the Division  
17                    in the development and administration of a system for the transfer and promotion of operators, and

18          (3)     Training and Retraining Subcommittee, whose function is to actively participate with the Division  
19                    in the development of training and retraining programs and to assist the Division in sponsoring  
20                    meetings and instructional conferences for the operators operators and licensees.

21  
22     History Note:     Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;  
23                     Eff. October 1, 1978;  
24                     Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; February 1, 1983. 1983;  
25                     Readopted Eff. \_\_\_\_\_.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0508

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Lines 4 and 6 – replace “Elected Committee of Vendors” with “ECBV”*

*Line 5 – replace “decision” with “decisions”*

*Lines 6-7 – delete “the terms and conditions set forth in”*

*Lines 12-13 – revise Subparagraph (c)(1) as follows:*

Operators and licensees who elect the members of the ECBV shall ensure that those elected represent all operators and licensees.

*Line 15 – replace “licensee” with “licensees”*

*Line 16 – delete “considered”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018



1 10A NCAC 63C .0508 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0508 FUNCTIONS**

4 (a) The Elected Committee of Vendors shall actively participate with the Division in major administrative decisions  
5 and policy and program development decision affecting the overall administration of the Business Enterprises  
6 Program. The Division and the Elected Committee of Vendors shall comply with the terms and conditions set forth  
7 in 34 C.F.R. 395.14.

8 (b) The ECBV shall participate in drafting Business Enterprises Program rules. The Division and ECBV shall work  
9 together in good-faith effort to come to agreement in matters related to Business Enterprises Program rule and policy  
10 changes.

11 (c) ECBV relationship to operators and licensees.

12 (1) It shall be the sole responsibility of the operators and licensees who elect the members of the ECBV  
13 to ensure that the elected represent all operators and licensees.

14 (2) The ECBV shall act as advocates for operators and licensees.

15 (3) The ECBV, ECBV officers, ECBV members, operators, employees of an operator, or licensee shall  
16 not be considered employees of the Division.

17

18 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107;*

19 *Eff. October 1, 1978;*

20 *Amended Eff. August 1, 2002; May 1, 1996; February 1, ~~1984~~. 1984.*

21 *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0509

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 1 – replace “readopted” with “repealed through readoption”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0509 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0509 SUBCOMMITTEES**

4

5 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;*  
6 *Eff. October 1, 1978;*  
7 *Amended Eff. August 1, 2002; May 1, 1996; February 1, ~~1984~~. 1984;*  
8 *Repealed Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0511

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Lines 4 – replace “will” with “shall”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0511 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0511 COMMITTEE INITIATIVE**

4 The committee may initiate matters for consideration and its views and positions will be considered by the Division.

5

6 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;*

7 *Eff. October 1, 1978;*

8 *Amended Eff. August 1, 2002; February 1, ~~1986~~ 1986;*

9 *Readopted Eff.\_\_\_\_\_.*

10

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0512

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 4 – replace “is” with “shall be”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0512 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0512 DIVISION RESPONSIBILITY AND RELATIONSHIP WITH COMMITTEE**

4 The Division ~~has the ultimate responsibility~~ is responsible for the administration of the Business Enterprises Program.

5 It shall consider all recommendations forthcoming from the ~~committee, Elected Committee of Blind Vendors, which~~  
6 ~~will act in an advisory capacity to the Division.~~ If the Division does not adopt the views and positions of the ~~committee~~

7 Elected Committee of Blind Vendors on a particular issue, it shall give written notice to the committee of the decision  
8 reached, the actions taken, and the reasons therefore.

9

10 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;*

11 *Eff. October 1, 1978;*

12 *Amended Eff. August 1, ~~2002~~. 2002;*

13 *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0601

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 6 – replace “The” with “A”*

*Line 7 – delete “perform to”*

*Line 8 – replace “the business” with “a business”*

*Line 9 – add a comma after “Blind”*

*Line 9 – delete “and standards issues pursuant thereto and”*

*Line 12 – do not capitalize “Rules”*

*Lines 15 and 20 – add a comma after “facility”*

*Line 18 – replace “is not” with “shall not be”*

*Line 21 – delete the comma after “facility”*

*Line 22 – delete “shall”*

*Line 23 – delete “must”*

*Lines 24-25 – delete “sponsor of the building or property where the facility is located.”*

*Line 28 – replace “month; assistance can be” with “month. Assistance shall be”*

*Line 33 – add a comma after “years”*

*Line 35 – delete the comma after “consultation”*

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018



*Lines 35 and 37 – add a comma after “reviews”*

*Page 2, line 2 – replace the period with a semicolon*

*Page 2, line 4 – within 15 days after what?*

*Page 2, line 4 – replace the comma with a semicolon*

*Page 2, lines 7 and 8 – begin these lines with “the”*

*Page 2, line 8 – add “and” after the semicolon*

*Page 2, line 10 – delete the comma*

*Page 2, lines 11-12 – delete “in accordance with Division guidelines developed to facilitate the provision of management, accounting, and technical services to operators, and”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0601 is readopted with changes as published in 32:22 NCR 2392 as follows:

2  
3 **SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS**

4  
5 **10A NCAC 63C .0601 GENERAL RESPONSIBILITIES**

6 (a) The Business Enterprises operator ~~must~~ shall:

- 7 (1) ~~perform faithfully and to the best of his ability the necessary duties in connection with~~ to ensure the  
8 operation of the Business Enterprises facility in accordance with the rules of the Commission for  
9 the Blind and standards issued pursuant thereto and the contractual agreement between the Division  
10 and the operator, and the terms and conditions of the permit or contract with the ~~building or property~~  
11 ~~on which the host facility facility is located;~~
- 12 (2) operate the facility in accordance with all applicable health laws and Rules;
- 13 (3) ~~assume such responsibilities as purchasing needed supplies and merchandise, pricing,~~  
14 ~~merchandising the facility, and control of inventory;~~ purchase merchandise, price goods for sale,  
15 purchase supplies for the facility and control inventory in the Business Enterprises facility;
- 16 (4) devote ~~his~~ full managerial attention to the responsibilities of operating the facility in accordance  
17 with the agreement ~~between him and~~ with the Division and in accordance with the Rules in this  
18 Subchapter. The operator is not required to be on site at all times; and
- 19 (5) maintain ~~good~~ professional relationships with customer customers, relations with his patrons and  
20 ~~with the property managing officials at his work site.~~ the host facility and the Division;
- 21 (6) ~~maintain a neat, business-like appearance while working at the Business Enterprises facility, and~~  
22 ~~shall conduct the facility in an orderly, business-like manner;~~
- 23 (7) ~~must assure that the business to be carried on at the facility shall be limited to that specified and~~  
24 ~~authorized in the operator agreement and permit or contract with the sponsor of the building or~~  
25 ~~property where the facility is located.~~ host facility;
- 26 (8) ~~open a business account in which funds are maintained to operate the Business Enterprises facility;~~
- 27 (9) ~~submit an electronic profit and loss report (D-sheet) to the Division by the 15<sup>th</sup> of the month~~  
28 ~~following the reporting month;~~ assistance can be provided with the electronic submission of the  
29 report by the Business Enterprises Representative upon request from the operator;
- 30 (10) ~~submit payment of all monthly fees to the Controller's Office by the 15<sup>th</sup> of the month following~~  
31 ~~the month in which the business was transacted;~~
- 32 (11) ~~keep all records supporting the monthly revenue and expense report (D-sheet) for three calendar~~  
33 ~~years~~ as required by this Subchapter;
- 34 (12) ~~provide all records for the assigned facility to the Division upon request for the purpose of business~~  
35 ~~consultation, and for conducting audits and record keeping reviews~~ as required by this Subchapter;
- 36 (13) ~~be available for all appointments with the Division staff members to allow inspection, advice, record~~  
37 ~~reviews and consultation to support operations, at the convenience of both parties;~~

1           (14) not subcontract management of the Business Enterprises facility except as approved in writing by  
2           the Division.

3           (15) take appropriate actions to correct deficiencies noted on Business Enterprises facility audits or  
4           reviews within 15 business days, and

5           (16) notify the Division of any changes to the following no later than 10 business days after the change  
6           occurs:

7                   (A) facility telephone number;

8                   (B) address to which Business Enterprises correspondence shall be delivered;

9                   (C) emergency contact information

10          (b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility, and shall  
11          handle the proceeds, including payments to suppliers and deposits of funds, in accordance with Division guidelines  
12          developed to facilitate the provision of management, accounting, and technical services to operators, and in accordance  
13          with the U. S. Department of Education reporting requirements.

14          ~~(e) The operator shall maintain a neat, business like appearance while working at the Business Enterprises facility,~~  
15          ~~and shall conduct the facility in an orderly, business like manner.~~

16          ~~(d) In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator~~  
17          ~~from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.~~

18          ~~(e) The operator must assure that the business to be carried on at the facility shall be limited to that specified and~~  
19          ~~authorized in the permit or contract with the sponsor of the building or property where the facility is located.~~

20  
21          *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*

22                   *Eff. February 1, 1976;*

23                   *Readopted Eff. November 16, 1977;*

24                   *Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978; 1978;*

25                   *Readopted Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0603

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 4 – replace “is responsible for seeing” with “shall ensure”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0603 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0603 SECURITY**

4 The operator is responsible for seeing that security and safety measures are carried out in accordance with good  
5 business practice and the requirements of each location.

6

7 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107a et seq., as amended;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. November 16, 1977;*

10 *Amended Eff. February 1, 1984; October 1, ~~1978.~~ 1978.*

11 *Readopted Eff. \_\_\_\_\_.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0604

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 1 – replace “readopted” with “repealed through readoption”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0604 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0604 REPORTS**

4

5 History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107;

6 *Eff. February 1, 1976;*

7 *Amended Eff. August 1, 1976;*

8 *Readopted Eff. November 16, 1977;*

9 *Amended Eff. August 1, 2002; May 1, 1996; February 1, 1996; February 1, 1984; October 1, ~~1978.~~*

10 *1978:*

11 *Repealed Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0701

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 1 – replace “readopted” with “repealed through readoption”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018



1 10A NCAC 63C .0701 is repealed as published in 32:22 NCR 2392 as follows:

2

3

**SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS**

4

**10A NCAC 63C .0701 MINIMUM FAIR RETURN AND DEFINITIONS**

6

7 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107;*

8

*Eff. February 1, 1976;*

9

*Readopted Eff. November 16, 1977;*

10

*Amended Eff. August 1, 2002; April 1, 1990; October 1, 1978;*

11

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*

12

*23, ~~2015-2015~~;*

13

*Repealed Eff. \_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0702

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 5 – add “business enterprises” before “facility”*

*Line 7 – what does “reasonable” mean? Is this determination governed by rules or regulations that could be cited here?*

*Line 7 – who is the Commissioner of the Rehabilitation Services Administration – is this a federal office?*

*Line 10 – delete the comma*

*Line 12 – what standards, factors, or circumstances govern the adjustment of se-aside rates? Is this determination governed by rules or regulations that could be cited here?*

*Lines 16-17 – move “to the operators” to immediately after “provide”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0702 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0702 SET-ASIDE**

4 (a) "Set-aside" and "Net Proceeds" are used as defined in 34 CFR 395.1.

5 (b) The Division shall set aside funds from the net proceeds of each facility to be used for the purposes outlined in 34  
6 C.F.R. 395.9.

7 (c) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation  
8 Services Administration.

9 (d) Any set-aside collected in excess of the amount needed to cover the purposes in this Rule and in excess of any  
10 reasonable reserve necessary to assure that such purposes can be achieved on a consistent basis, shall be refunded on  
11 a pro rata basis. ~~basis at the end of the fiscal year.~~

12 (e) Set-aside rates may be adjusted to meet program goals and objectives and shall be determined by the Division in  
13 conjunction with the operators and the NC Commission for the Blind.

14 (f) The Division shall, with the active participation of the ECBV, develop an annual set-aside authorized budget for  
15 the Business Enterprises Program subject to Office of State Budget Management approval.

16 (g) The Division shall provide an annual report with full and complete disclosure of all set-aside expenditures of the  
17 Business Enterprises Program to the operators.

18

19 *History Note: Authority G.S. 111-12.5; 111-13; 111-27; 111-50; 143B-157; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20*  
20 *U.S.C. sec. 107;*

21 *Eff. February 1, 1976;*

22 *Readopted Eff. November 16, 1977;*

23 *Amended Eff. August 1, 2002; May 1, 1996; January 1, 1990; July 1, 1987; February 1, 1986; July*  
24 *1, ~~1980.~~ 1980.*

25 *Readopted Eff.\_\_\_\_\_.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0704

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Lines 4-22 - replace all of the text of this Rule with: "34 C.F.R. 395.8 is incorporated by reference with subsequent amendments and editions."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0704 is readopted as published in 32:22 NCR 2392 as follows:

2

3 **10A NCAC 63C .0704 INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY**

4 (a) Income from vending machines on federal property which has been disbursed to the Division by a property  
5 managing department, agency, or instrumentality of the United States under the vending machine income sharing  
6 provisions in 34 CFR 395.32 shall accrue to each operator of the Business Enterprises facility in an amount not to  
7 exceed the average net income of the total number of blind operators within such state as determined each fiscal year  
8 on the basis of each prior year's operation. Vending machine income shall not accrue to any operator in any amount  
9 exceeding the average net income of the total number of blind operators in the United States.

10 (b) No blind operator shall receive less vending machine income than he was receiving during the calendar year prior  
11 to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

12 (c) No limitation shall be imposed on income from vending machines, combined to create a Business Enterprises  
13 facility, when such facility is maintained, serviced, or operated by a blind operator. The Division shall retain vending  
14 machine income disbursed by a property managing department, agency, or instrumentality of the United States in  
15 excess of the amounts eligible to accrue to blind operators.

16 (d) Vending machine income retained by the Division shall be used for the establishment and maintenance of  
17 retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation  
18 time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been  
19 furnished information on all matters relevant to such purposes; any vending machine income not necessary for such  
20 purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new  
21 equipment; management services, and assuring a fair minimum return to operators; and any assessment charged to  
22 blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

23

24 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;*

25 *Eff. October 1, 1978;*

26 *Amended Eff. August 1, 2002; February 1, ~~1986~~ 1986;*

27 *Readopted Eff. \_\_\_\_\_.*

28

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63F .0101

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Lines 8 and 27 – do not capitalize “Individualized Plan for Employment” unless it is a proper noun.*

*Lines 11 and 13 – delete “that”*

*Line 14 – add a comma after “in”*

*Line 15 – replace “is” with “shall be”*

*Line 20 – replace “are” with “shall be”*

*Line 20 – replace “must” with “shall”*

*Line 28 – indent the text to be on the same tab as the line above*

*Line 28 – replace “are” with “shall be”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63F .0101 is readopted as published in 32:22 NCR 2392 as follows:

2  
3 **SUBCHAPTER 63F - VOCATIONAL REHABILITATION**

4  
5 **SECTION .0100 - SERVICES**

6  
7 **10A NCAC 63F .0101 ELIGIBILITY FOR AND AUTHORIZATION OF SERVICES**

8 (a) An Individualized Plan for Employment shall be developed to provide services to applicants to the vocational  
9 rehabilitation program who meet the following criteria:

- 10 (1) the applicant for services has a physical or mental impairment;
- 11 (2) that the physical or mental impairment constitutes or results in a substantial impediment to  
12 employment for the applicant; and
- 13 (3) that the applicant requires vocational rehabilitation services in order to prepare for, secure, retain,  
14 advance in or regain employment.

15 (b) It is presumed that the applicant can benefit in terms of an employment outcome from the provision of vocational  
16 rehabilitation services unless it can be demonstrated through clear and convincing evidence that the applicant is  
17 incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity  
18 of the disability.

19 (c) Applicants who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social  
20 Security Act are presumed eligible for vocational rehabilitation services; however, the applicant must intend to achieve  
21 an employment outcome.

22 (d) Authorization of Services:

- 23 (1) The Division shall issue a written authorization for services prior to or simultaneously with the  
24 provision of the service. A copy of the authorization shall be retained in the case file.
- 25 (2) The Division shall authorize services that are required for a consumer to participate in an assessment  
26 to determine eligibility for services. The Division shall also authorize services required for a  
27 consumer to complete the goals identified on his or her Individualized Plan for Employment (IPE).
- 28 (3) Authorizations are issued based on availability of funds.

29 ~~(e) Oral authorizations may be issued on occasions for services when it is a matter of urgency. Such authorizations  
30 may be made by a rehabilitation counselor or a rehabilitation supervisor. On such occasions, a record of such oral  
31 authorizations shall be made and retained in the consumer's case file. In all such cases confirming authorizations shall  
32 be written.~~

33  
34 *History Note:* Authority G.S. 134B-157; 34 C.F.R. 361.1; 34 C.F.R. 361.3; 34 C.F.R. 361.42(a); 34 C.F.R. 361.45;  
35 Eff. February 1, 1976;  
36 Amended Eff. November 8, 1976; June 25, 1976;  
37 Readopted Eff. November 16, 1977;  
38 Amended Eff. August 1, 2002; 2002;

1  
2

Readopted Eff.



REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63F .0102

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 5 – add a comma after “profession”*

*Line 7 – replace “includes” with “shall include”*

*Line 8 – replace “which” with “that”*

*Line 9 – replace “adjustment; it covers” with “adjustment and it shall cover”*

*Lines 11-12 – are “applicants accepted for evaluation” with the same as “financially eligible consumers? Requests below assume they are not the same.*

*Line 13 – add “of consumers” after “education” if that is what is meant.*

*Line 16 – delete the comma*

*Line 16 – replace “state supported” with “State-supported”*

*Line 17 – add a period at the end of this line*

*Line 18 – replace “will” with “shall”*

*Line 24 – replace “semester/quarter” with “semester or quarter”*

*Line 25 – replace the semicolon with a period*

*Line 26 – replace “must” with “shall”*

*Line 27 – replace “will” with “shall”*

*Lines 29 (twice), 36, and 37 – add “of her” after “his”*

*Line 31 – replace “this” with “the”*

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

*Line 31 – replace “our Agency” with “agency”*

*Line 32 – replace “must” with “shall”*

*Page 2, line 1 – replace “this” with “the”*

*Page 2, line 4 – replace “must” with “shall”*

*Page 2, line 10 – replace the semicolon with a period*

*Page 2, line 11 – replace “said” with “the”*

*Page 2, lines 11-12 – what does “enter a position” mean?*

*Page 2, line 18 – replace “are” with “shall be”*

*Page 2, line 19 – how are these agreements made? What rules govern making these agreements?*

*Page 2, line 20 – capitalize “Program”*

*Page 2, line 20 – replace “is” with “shall be”*

*Page 2, line 22 – replace “are usually based on” with “shall be based on such factors as”  
What other factors are the bases for the fees?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63F .0102 is readopted as published in 32:22 NCR 2392 as follows:

2  
3 **10A NCAC 63F .0102 TRAINING AND TRAINING MATERIALS**

4 (a) The Division shall furnish training to all eligible individuals to the extent necessary to achieve their vocational  
5 rehabilitation outcome and to the extent that entry level qualifications of the job, profession or employment are  
6 achieved.

7 (b) Training provided by the Division includes vocational, prevocational, personal adjustment training, and other  
8 rehabilitation training which contributes to the determination of the rehabilitation potential or to the individual's  
9 personal and vocational adjustment; it covers training provided directly by the Division or procured from other public  
10 or private training facilities, including community rehabilitation programs.

11 (c) The Division shall provide necessary books and other training materials to applicants accepted for evaluation of  
12 the rehabilitation potential and to financially eligible consumers.

13 (d) The Division shall provide financial support for post-secondary education under the following terms and  
14 conditions:

15 (1) Financial support for consumers attending institutions of higher learning shall not exceed the  
16 maximum rate for tuition and fees, established at state supported colleges and universities in North  
17 Carolina

18 (2) Requests for support will be considered only when the consumer has applied for grants and  
19 scholarships at the accepting institution. The Division shall deduct the grant amount from the  
20 consumer's training allotment.

21 (3) Consumers who are sponsored for an undergraduate degree shall not receive more than 10 semesters  
22 or 15 quarters of sponsorship to complete their undergraduate degree or five semesters/eight quarters  
23 to complete a community college program. The Division may grant an exception to the  
24 semester/quarter requirements when necessary to accommodate the special training needs of  
25 consumers with severe disabilities;

26 (4) Consumers who are sponsored for undergraduate programs must maintain a grade point ~~ratio~~  
27 average (GPA) of 2.0. Agency sponsorship will be withdrawn from any consumer in an  
28 undergraduate program whose ~~GPR~~ GPA falls below 2.0 for two consecutive semesters or quarters.  
29 If the consumer continues in the educational institution under his own sponsorship and brings his  
30 cumulative ~~GPR~~ GPA to 2.0, the consumer may again be considered for sponsorship through the  
31 VR Program of this agency. Consumers under our Agency sponsorship for graduate or professional  
32 programs must maintain a grade point ~~ratio~~ average commensurate with the standards established  
33 by the educational institution they are attending for degree requirements. Agency sponsorship shall  
34 be withdrawn from any consumer in graduate or professional programs whose ~~GPR~~ GPA falls below  
35 the standards established by the educational institution for degree requirements for two consecutive  
36 semesters or quarters. If the consumer continues in the educational institution under his own  
37 sponsorship and brings his cumulative ~~GPR~~ GPA to the standard established by the educational

1 institution, the consumer may again be considered for sponsorship through the VR Program of this  
2 agency. Consumers may receive agency sponsorship for vocational training or on-the-job training  
3 outside of programs offered in undergraduate, graduate, and professional schools. A consumer who  
4 is participating in such a program must maintain grades or standards of performance commensurate  
5 with the standards established by the institution or trainer for satisfactory completion of the training  
6 program within an established time frame. The agency shall not sponsor a consumer in a vocational  
7 training or on-the-job training program for more than one additional unit of time as defined by the  
8 particular institution or trainer in order to complete the program. The Division may grant an  
9 exception to the length of training sponsorship when necessary to accommodate the special training  
10 needs of consumers with severe disabilities;

11 (5) The Division may provide graduate training for consumers when said training is required to enter a  
12 position. The consumer's case file shall contain a letter from an official of the appropriate graduate  
13 school of higher learning designating the number of semesters or quarters required to achieve the  
14 graduate degree. The Division shall not sponsor consumers in excess of one quarter or one semester  
15 above that specified in the letter as a time required to receive the graduate degree. The Division  
16 may grant an exception to the length of training when necessary to accommodate the special training  
17 needs of consumers with severe disabilities.

18 (e) Other training services, including training at community rehabilitation programs, are purchased on the basis of  
19 agreements made between the trainer and staff members of the Division.

20 (f) Training at the Rehabilitation Center for the Blind and with the Business Enterprises program is purchased on the  
21 basis of rates established by the Division in consultation with the supervisors of the training units in this Rule. The  
22 rates are usually based on per diem costs.

23  
24 *History Note:* Authority G.S. 111-28; 34 C.F.R. 361.42; 34 C.F.R. 361.47; C.F.R. 361.48(f);  
25 Eff. February 1, 1976;  
26 Readopted Eff. November 16, 1977;  
27 Amended Eff. February 1, 1982;  
28 Temporary Amendment Eff. August 1, 2001;  
29 Amended Eff. August 1, ~~2002~~; 2002;  
30 Readopted Eff.\_\_\_\_\_.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63F .0402

**DEADLINE FOR RECEIPT: Friday, September 14, 2018**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Line 6 – add “the” before “economic”*

*Line 6 – replace “for” with “of”*

*Line 10 add “(SSA) after “Act” and before the comma*

*Line 14 – add a comma after “services”*

*Line 18 – add “an” before “assessment”*

*Line 21 – add “and” after the semicolon*

*Line 23 – replace “college/college” with “college or college”*

*Line 23 – what does “college parallel” mean? Is this term widely understood by your regulated public?*

*Lines 26-30 – further indent this text to line up with the other text in (b)(5).*

*Line 31 – add a comma after “services”*

*Line 32 – add a comma after “hearing”*

*Line 33 – replace “deaf-blind” with “deaf and blind” if this is what is meant*

*Line 35 – add a comma after “assistance”*

*Page 2, line 1 – add “services” after “Center”*

*Page 2, line 1 – add a comma after “services”*

*Page 2, line 2 – add a comma after “supplies”*

Jason Thomas  
Commission Counsel

Date submitted to agency: Tuesday, September 4, 2018

*Page 2, line 11 – do not capitalize this term unless it is a proper noun*

*Page 2, line 16 – replace “Act” with “Rehabilitation Act Amendments”*

*Page 2, line 16 – add “the Act,” within the parentheses and before “P.L.”*

*Page 2, line 16 – add a comma after “this Act”*

*Page 2, line 19 – add a comma after “employment”*

*Page 2, line 20 delete “and”*

*Page 2, line 21 – add a comma after “self-employment”*

*Page 2, line 22 – delete the first “or”*

*Page 2, line 22 – add a comma after “telecommuting”*

*Page 2, line 22 – replace the period with “: and”*

*Page 2, line 23 – add “who are” after “disabilities”*

*Page 2, line 23 – add a comma after “age”*

*Page 2, line 25 – add “shall Be” before “conditioned”*

*Page 2, line 27 – delete the parentheses and add either “that are” or “, including” before “medical”*

*Page 2, line 29 – replace “the rendering of” with “rendering”*

*Page 2, line 33 – add a comma after “regain”*

*Page 2, line 35 – add a comma after “employment”*

*Page 3, line 3 – add a comma after “periods”*

*Page 3, line 4 – delete the comma after “rehabilitation”*

*Page 3, line 4 – replace “which” with “that,”*

*Page 3, line 6 – delete the comma*

*Page 3, line 6 – replace “which” with “that,”*

*Page 3, line 9 – replace “are not” with “shall not be”*

*Page 3, line 11 – delete the underscore beneath the dash*

*Page 3, line 12 – add a comma after “technology”*

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

*Page 3, line 13 – do not capitalize “individualized plan for employment”*

*Page 3, line 13 – delete the semicolon*

*Page 3, line 16 – delete “as determined by the Legislature”*

*Page 3, line 17 – replace “and” with a comma*

*Page 3, line 21 – list the authority in numerical order (move “34 C.F.R. 361.5”)*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas  
Commission Counsel  
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63F .0402 is readopted as published in 32:22 NCR 2392 as follows:

2  
3 **SECTION .0400 – ECONOMIC NEED**  
4

5 **10A NCAC 63F .0402 ECONOMIC NEEDS POLICIES**

6 (a) The Division of Services for the Blind shall establish economic need for each eligible consumer either  
7 simultaneously with or prior to the provision of those services for which the Division requires a needs test. The  
8 financial need of a consumer shall be determined by the financial needs test specified in Rule .0403 of this Section.  
9 If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security  
10 Act, the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation  
11 of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive services  
12 through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.

13 (b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- 14 (1) an assessment for determining eligibility and priority for services except those non-assessed services  
15 that are provided during an exploration of the applicant's abilities, capabilities, and capacity to  
16 perform in work situations through the use of trial work experiences or an extended evaluation and  
17 an assessment by personnel skilled in rehabilitation technology;
- 18 (2) assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;
- 19 (3) vocational rehabilitation counseling and guidance, including information and support services to  
20 assist an applicant or consumer in exercising informed choice;
- 21 (4) tuition and supplies for Community Rehabilitation Program training;
- 22 (5) tuition and fees for:
- 23 (A) community college/college parallel and vocational programs up to the catalog rate; and  
24 (B) post-secondary education up to the maximum rate charged for the North Carolina public  
25 university system.

26 The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B)  
27 of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to  
28 the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule  
29 when necessary to accommodate the special training needs of severely disabled individuals who must be  
30 enrolled in special programs designed for severely physically disabled students;

- 31 (6) interpreter services including sign language and oral interpreter services for applicants or consumers  
32 who are deaf or hard of hearing and tactile interpreting services for applicants or consumers who  
33 are deaf-blind;
- 34 (7) reader services, rehabilitation teaching services, and orientation and mobility services;
- 35 (8) job-related services, including job search, job placement employment assistance and job retention  
36 services;



- 1 (9) DSB Rehabilitation Center or fundamental independent living rehabilitation adjustment services  
2 including transportation and training supplies contingent on a consumer's participation in the  
3 program;
- 4 (10) diagnostic transportation;
- 5 (11) on-the-job training;
- 6 (12) training and associated maintenance and transportation costs for Business Enterprises Program  
7 trainees;
- 8 (13) upward mobility training and associated maintenance and transportation costs for Business  
9 Enterprises Program trainees;
- 10 (14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- 11 (15) Supported Employment Services;
- 12 (16) personal assistance services provided while a consumer with a disability is receiving vocational  
13 rehabilitation services;
- 14 (17) referral and other services designed to assist applicants or consumers with disabilities in securing  
15 needed services from other agencies through agreements developed under Section 101(a)(11) of the  
16 Act (P.L. 102-569), if such services are not available under this Act and to advise those individuals  
17 about client assistance programs established under the Act;
- 18 (18) transition services for students with disabilities that facilitate the achievement of the employment  
19 outcome identified in the student's individualized plan for employment except for those services  
20 based on economic need; and
- 21 (19) technical assistance and other consultation services to consumers who are pursuing self-employment  
22 or telecommuting or establishing a business operation as an employment outcome.
- 23 (20) provision of pre-employment transition services to students with disabilities 14-21 years of age  
24 whether they are presently a VR client or a potentially eligible individual.

25 (c) The following services shall be provided by the Division of Services for the Blind and conditioned on economic  
26 need:

- 27 (1) physical and mental restoration services (medical services other than diagnostic);
- 28 (2) maintenance for additional costs incurred while participating in rehabilitation;
- 29 (3) transportation in connection with the rendering of any vocational rehabilitation service except where  
30 necessary in connection with determination of eligibility or nature and scope of services;
- 31 (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation  
32 of the consumer with a disability;
- 33 (5) post-employment services necessary to assist consumers with visual disabilities to maintain, regain  
34 or advance in employment except for those services not conditioned on economic need listed in  
35 Paragraph (b) of this Rule;
- 36 (6) fees necessary to obtain occupational licenses;

1 (7) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of  
2 this Paragraph;

3 (8) expenditures for short periods not to exceed 30 days of medical care for acute conditions arising  
4 during the course of vocational rehabilitation, which if not cared for, will constitute a hazard to the  
5 achievement of the vocational rehabilitation objective; and

6 (9) other goods and services not prohibited by the Act (P.L. 102-569), which can reasonably be expected  
7 to benefit an individual with a disability in terms of his employability or independent living skill  
8 development.

9 (d) Notwithstanding Paragraph (c) of this Rule, the following services are not subject to economic need for individuals  
10 being served through the Vocational Rehabilitation Program:

11 (1) books and other training materials required for post-secondary training; and

12 (2) rehabilitation technology including telecommunications, sensory aids, and other technological aids  
13 and devices for consumers who have an Individualized Plan for Employment (IPE); who are  
14 working toward an employment goal that requires specified technology to attain, regain, or maintain  
15 employment and who have the capability to use the equipment.

16 (e) The Division of Services for the Blind shall publish the standard as determined by the Legislature for measuring  
17 the financial need of consumers with respect to normal living requirements and for determining their financial ability  
18 to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation  
19 required to procure the necessary services.

20  
21 *History Note: Authority G.S. 111-28; 34 C.F.R. 361.48; 34 C.F.R. 361.5; 34 C.F.R. 361.52; 34 C.F.R. 361.54;*  
22 *P.L. 102-569, Section 103; S.L. 2009-475;*  
23 *Eff. February 1, 1976;*  
24 *Amended Eff. August 1, 1976;*  
25 *Readopted Eff. November 16, 1977;*  
26 *Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990; April 1, 1990;*  
27 *Temporary Amendment Eff. August 1, 2001;*  
28 *Amended Eff. August 1, 2002;*  
29 *Emergency Amendment Eff. September 23, 2009;*  
30 *Temporary Amendment Eff. November 16, 2009 to expire on June 30, 2012(See G.S. 150B-21.1B);*  
31 *Amended Eff. July 1, ~~2012~~, 2012;*  
32 *Readopted Eff. \_\_\_\_\_.*