

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**

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

1 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107;*
2 *Eff. February 1, 1976;*
3 *Readopted Eff. November 16, 1977;*
4 *Amended Eff. August 1, 2002; February 1, 1986; October 1, 1978;*
5 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
6 *23, ~~2015~~, 2015;*
7 *Amended Eff. _____.*

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

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10A NCAC 63C .0102 RESPONSIBILITY

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

~~(b) (a) The Division shall assure that that:~~

(1) each operator is provided access to all program and financial data of the Division relevant to the operation of the ~~state vending facility program,~~ 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) ~~that~~ insofar as practicable such data shall be made available on tape, disk, large print, and Braille; and

(3) ~~that,~~ at the request of an operator, the Division will arrange a convenient time to assist in the interpretation of such data.

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

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

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

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; October 1, 1978. 1978; Readopted Eff. _____.

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

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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 shall be** vested in the Division only
9 and may be used and disposed of by the Division for program purposes only, and in accordance with state and federal
10 law.

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

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

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23 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.6; 20 U.S.C. Sec. 107;*
24 *Eff. October 1, 1978;*
25 *Amended Eff. August 1, 2002;*
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
27 *23, 2015. 2015;*
28 *Amended Eff. _____.*

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

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

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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.]~~ license. This license shall be issued for an indefinite ~~period.~~ period but
9 shall be subject to suspension or termination if, after affording the operator or licensee an opportunity for a full
10 evidentiary hearing, ~~[the Division finds that]~~ the Business Enterprises facility is not being operated in accordance with
11 [its rules and regulations] the Rules in this Subchapter, the terms and conditions of the ~~[permit and the]~~ facility permit,
12 contract or agreement and the terms and conditions of the ~~[agreement with the operator.]~~ operator agreement. The
13 licensee shall signify his acceptance of the licensing agreement by affixing his signature or mark thereon.

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

16 *Eff. October 1, 1978;*

17 *Amended Eff. August 1, 2002;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
19 *23, 2015. 2015;*

20 *Amended Eff. _____.*

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

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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 the Business Enterprises Program concerning the potential of the
6 referral commensurate with the specific job requirements of the Business Enterprises Program.

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

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 Subchapter;

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

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

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

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

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

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

26 Eff. October 1, 1978;

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

28 1982;

29 Readopted Eff. _____.

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, 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 that 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 that the operator is not legally blind.~~

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

- ~~(1) Vision improves so that the operator is no longer eligible for licensing;~~
- ~~(2)(1) Extended illness extended has an illness, defined as lasting illness that lasts at least three months, occurs with a 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 withdraws 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 is convicted of a felony (Class A through E); misdemeanor involving crimes of dishonesty or of any felony;~~
- ~~(6)(4) Falsified falsified information pertaining to eligibility requirements;~~
- ~~(7)(5) Willful commits willful acts that would endanger the lives and property of others;~~
- ~~(8)(6) Possession of possesses 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 partakes of such on the job;~~

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

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

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27 *History Note:* Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
28 Eff. October 1, 1978;
29 Amended Eff. August 1, 2002; February 1, ~~1986~~. 1986;
30 Readopted Eff. _____.
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1 10A NCAC 63C .0204 is amended with changes as published in 32:22 NCAC 2392 as follows:

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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
8 for receipt of application.

9 (2) Applicants shall 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 Business Enterprises Program 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: Sanitation points shall be awarded based on the sanitation grades for the business
20 enterprises facilities that were operated by an applicant, as follows:

21 (A) Ten five point points maximum;

22 (B) One one point for each sanitation grade point above ninety; and

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

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

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

32 (2) Seniority: Seniority points shall be awarded based on the number of years that an applicant has been
33 an operator in the Business Enterprises Program, as follows:

34 (A) Five five point points maximum; and

35 (B) Seniority seniority points per years in the program: shall be awarded as follows:

36 Years in Business Enterprises Program – Points

37 0 to 4.99 years - 0 points

1 5 to 9.99 years - 1 point

2 10 to 14.99 years - 2 points

3 15 to 19.99 years - 3 points

4 20 to 24.99 years - 4 points

5 25 and over years - 5 points

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

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

20 (A) 50 Points Maximum; points maximum:

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

23 (C) Applicants applicants shall receive 20 15 points for meeting or exceeding 85 percent of
24 their gross profit percentage standard;

25 (D) Applicants applicants shall receive five points for meeting or exceeding 92.5 90 percent of
26 their sales optimum;

27 (E) Applicants applicants shall receive five points for meeting or exceeding 92.5 90 percent of
28 their gross profit percentage optimum.

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

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

33 (4) Customer and Building Management Relations:

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

36 (B) If the applicant has more than three written site management complaints, he shall not be
37 considered for the award. No site management complaint that is more than three years old

1 may be used against an operator. Site management is defined as the property official for
2 the property on which a BEP facility is located.

3 ~~(5)~~(4) Oral Exam/Interview: The oral exam and interview shall be conducted and evaluated as follows:

4 (A) ~~30 40 points maximum.~~ maximum:

5 (B) Interview the interview shall be face to face (no conference calls). A conference call shall
6 not be considered face-to-face:

7 (C) All each applicants applicant shall be interviewed complete the interview process to be
8 considered for award of the facility; and

9 (D) The Interview Committee shall consist of:

10 (i) ~~—~~ The Chief of Business Enterprises, or Deputy Chief or Assistant Director of
11 Programs and Facilities as designated by Chief;

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

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

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

31 (F) The interview part shall consist of a variety of questions in a give and take format. Each
32 member of the Interview Committee shall evaluate the applicant's response to the interview
33 questions and shall award up to 10 additional points based on the applicant's previous food
34 service experience, knowledge and financial performance. If the applicant meets the
35 requirements for the facility, the applicant shall receive five additional points. If the
36 applicant's qualifications exceed the requirements of the facility, he may be awarded up to
37 ten additional points. The interview shall include the following elements: questions related

1 to business philosophy to promote general discussion to enable the interview panel to
2 evaluate the applicant's expertise, maturity, experience and ability; a discussion of any
3 related work experience outside the Business Enterprises Program; at least two business
4 math questions. Since points are awarded for seniority, time in the Business Enterprises
5 Program shall not be considered as a reason to award points; however, relevant work
6 experience in the Business Enterprises Program may be discussed and taken into
7 consideration. Applicants may bring letters of recommendation, certificates, and other
8 documents that would aid the Interview Committee in awarding its discretionary points.

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

12 ~~(6)(5)~~ Licensees and trainees:

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

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

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

35 (6) An operator who is currently managing a Business Enterprises military dining facility shall be
36 assigned 50 points in Subparagraph (d)(3) of this Rule plus any seniority points.

- 1 (7) After calculating the point total of this Rule for each applicant, the applicant with the highest point
2 total shall be awarded the vacancy. If the applicant with the highest point total declines to accept
3 the location, it shall be offered to the applicant with the next highest point total. In the case of an
4 exact tie, the seniority points of the two applicants shall be deducted and the total points recalculated.
5 The applicant with the recalculated highest points shall be awarded the location.
- 6 (8) Applicants shall be notified by telephone after the conclusion of interviews whether or not they have
7 been awarded a location. This notification shall be followed up in writing.
- 8 (9) The location shall not be filled for 15 working days following the award to allow time for
9 administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal
10 is resolved. If there is only one applicant for a location, the 15-day waiting period shall not apply.
- 11 (10) Upon being awarded a location, the applicant shall have 20 business days to fill the vacancy. The
12 Division and awarded operator shall agree to a different time frame if adhering to the 20 business
13 days' time frame would cause a hardship.
- 14 (11) If an applicant is awarded a facility and has not had an operator agreement with the Division in the
15 last two years and the applicant did not meet his or her financial analysis and operating standards
16 for the last 12 months that the agreement was in effect, the applicant shall complete a refresher
17 course training to assure qualified management.
- 18 (12) An applicant shall have operated a Business Enterprises facility for twelve months prior to the cut-
19 off date for calculating financial performance according to standards to be considered an operator,
20 or the operator shall be in licensee status. The cut-off date shall be the 12-month period ending with
21 the last day of the same month in which the vacancy is advertised.
- 22 (13) If an operator who is not currently operating a Business Enterprises facility applies for a vacancy
23 within 12 months of leaving a facility, the financial performance standards for the prior facility shall
24 be used for Subparagraph (d)(3) of this Rule if the financial performance analysis was completed
25 within the required three-year period.
- 26 (14) Financial analyses of facilities shall be completed every three years. The analysis shall be of the
27 facility, not the operator. An operator may request a new analysis after nine months in the new
28 facility.
- 29 (15) An applicant shall not sit on the Interview Committee for a location for which he or she is applying
30 or if a member of his or her immediate family has applied for a vacant facility. Immediate family
31 means a spouse, parent, or child. This definition includes all siblings, including step, half, and in-
32 law relationships. If a member of the Interview Committee is disqualified from serving as a result
33 of this rule, the Chair and Vice Chair shall jointly select a member of the ECBV to sit on the
34 Interview Committee.
- 35 (16) Applicants shall be reimbursed for their expenses to come to the interview at the State's per diem
36 rates. The Business Enterprises Program shall only reimburse for three interviews per year. After

1 that, applicants shall bear their own expenses for coming to interviews. Applicants who have active
2 rehabilitation cases shall be reimbursed through the rehabilitation program.

3
4 *History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*
5 *Eff. October 1, 1978;*
6 *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*
7 *February 1, 1981;*
8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
9 *23, ~~2015~~, 2015;*
10 *Amended Eff. _____.*

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~~ shall enter into ~~a contractual~~ an
5 operating agreement with the Division upon initial placement and upon subsequent reassignment.

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

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

11 (1) ~~the~~ responsibilities of the licensed operator ~~as contained in~~ required by the rules in this Subchapter;

12 (2) ~~the~~ responsibilities of the Division ~~as contained in~~ required by the rules in this Subchapter;

13 (3) ~~that~~ the licensed operator will receive the net proceeds ~~in~~ in accordance with 45 34 CFR 1369.1(k)
14 ~~[395.9]~~ 395.9 from the Business Enterprises facility ~~he/she~~ he or she operates in accordance with
15 Section .0700 of this Subchapter;

16 (4) ~~the right of the operator~~ operator's right to terminate the agreement at any time;

17 (5) ~~that~~ the agreement will be ~~[shall]~~ will terminated terminate upon termination of the permit or
18 contract with the ~~sponsor of the site upon which the Business Enterprises facility is located;~~ host
19 facility;

20 (6) that the agreement will be ~~[shall]~~ will terminated terminate upon failure of the licensed operator to
21 operate the Business Enterprises facility in accordance with the agreement or ~~the~~ rules in this
22 Subchapter or applicable federal, ~~state,~~ State, or local laws or regulations;

23 (7) ~~that~~ the agreement will ~~[shall]~~ will be terminated terminate upon the closing of a facility ~~which~~ that
24 ~~the Division [Division, with ECBV active participation,]~~ has determined offers no possibility of
25 being profitable.

26

27 *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;*

28 *Eff. October 1, 1978;*

29 *Amended Eff. August 1, 2002; February 1, 1984; February 1, 1983. 1983:*

30 *Readopted Eff. _____.*

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~~ program, 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. _____.*

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

2

3 **10A NCAC 63C .0302 TEMPORARY CLOSING**

4

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

6 *Eff. February 1, 1976;*

7 *Readopted Eff. November 16, 1977;*

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

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

10 *23, 2015, 2015;*

11 *Repealed Eff. _____.*

12

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

2

3

SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE

4

10A NCAC 63C .0401 PURPOSE

6

7 *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;*

8

Eff. October 1, 1978;

9

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

10

***[Readopted]** Repealed Eff. _____.*

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~~ **Rule** shall be covered fully during
6 orientation 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._____.*

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
6 ECBV] is dissatisfied and request specific action in writing to resolve the grievance. This [The written grievance and
7 requested resolution shall be submitted to the Division and the] discussion shall be held within 15 working-[business]
8 days of the occurrence of the action challenged by the operator. [operator or licensee or the ECBV.] The operator/
9 licensee operator or licensee or the ECBV shall receive a response within five working business days following the
10 discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval.
11 If the grievance is not received within 15 business days of the occurrence of the action challenged, the grievance will
12 be invalid and the Division's action final. may file a complaint with the Division requesting a full evidentiary hearing
13 if 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.~~

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. asks for a review by the operator relations committee~~
31 ~~prior to requesting an evidentiary hearing, the written grievance and requested resolution shall be submitted to the~~
32 ~~operator relations committee within 15 business days after the event or incident occurred that is being challenged by~~
33 ~~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 or 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.

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

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

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

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

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

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

34 (m) ~~All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and~~
35 ~~provided to the other party. All such documents and other evidence submitted shall be open to examination by the~~
36 ~~parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues. The blind~~
37 ~~operator or licensee or the ECBV and the Division shall be entitled to present their case by oral or documentary~~

1 evidence, to submit rebuttal evidence, and to conduct such examination and cross-examination of witnesses as may
2 be required for a full and true disclosure of all facts bearing on the issue.

3 (n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay
4 all transcript costs and shall provide the blind operator/ licensee operator or licensee or the ECBV with at least one
5 copy of the transcript. All papers and documents introduced into evidence at the hearing shall be filed with the
6 presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to
7 examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of
8 the issues.

9 (o) The ~~A~~ transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the
10 exclusive record for decision. be made of the oral evidence and shall be made available to the parties. The Division
11 shall pay all transcript costs and shall provide the blind operator or licensee or the ECBV with at least one copy of the
12 transcript.

13 (p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing,
14 and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and
15 conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any
16 remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working business
17 days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/ licensee
18 operator or licensee or the ECBV and the division. transcript of testimony, exhibits, and all papers and documents
19 filed in the hearing shall constitute the exclusive record for decision.

20 (q) If the dispute(s) is not resolved to the satisfaction of a blind operator/ licensee operator or licensee or the ECBV
21 after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of
22 Education for the convening of an arbitration panel. The decision of the presiding officer shall set forth the principal
23 issues and relevant facts adduced at the hearing and the applicable provisions in law, federal regulations, and State
24 rules. It shall contain findings of fact and conclusions with respect to each of the issues and the reasons and basis
25 therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision
26 shall be made within 15 business days after the receipt of the official transcript. The decision shall be mailed promptly
27 to the blind operator or licensee or the ECBV and the division.

28 (r) The results of the arbitration shall be considered the final agency action and the operator/ licensee operator or
29 licensee or the ECBV shall have exhausted his administrative remedies. If the disputes are not resolved to the
30 satisfaction of a blind operator or licensee or the ECBV after provision of a full evidentiary hearing, an appeal may
31 be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.

32 (s) The decision of the arbitration panel shall be subject to appeal and review as a final agency action for the purposes
33 of 5 U.S.C. Chapter 7.

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

35 *Eff. October 1, 1978;*

36 *Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983;*

37 *December 1, 1981; 1981;*

1 10A NCAC 63C .0501 is repealed through readoption 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._____.*

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;] that, to the extent~~
7 ~~possible, shall be fully representative of all blind licensees and operators in the Business Enterprises [program]~~
8 ~~Program on the basis of such factors as geography and vending facility [type] type, with a goal of providing for~~
9 ~~proportional representation of blind vendors on [Federal] federal property and blind vendors on other property.~~
10 ~~Participation by any blind vendor in any election 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 ~~that 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. The chair shall provide the Business Enterprises Program with a written meeting agenda ten~~
33 ~~business days before each meeting.~~

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

36 ~~[(A)]~~ (1) The chair shall preside over all business meetings of the ECBV.

37 ~~[(B)]~~ (2) The chair shall conduct meetings according to Roberts Rules of Order.

38 ~~[(C)]~~ (3) A majority shall constitute a quorum.

1 ~~(D)~~ (4) The chair shall create subcommittees as the business of the ECBV warrants, excluding those
2 subcommittees specifically required in ~~(h)~~ Paragraph (h) of this Rule.

3 ~~(E)~~ (5) 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~~ subcommittees: as defined below Operator Relations Subcommittee, Transfer
6 and Promotion 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~~ ECBV
10 from its members.

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

13 (C) The ECBV chair shall appoint a temporary replacement for ~~any~~ an 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,~~
18 operators; and

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

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

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~~ ECBV shall actively participate with the Division in major administrative
5 decisions and policy and program development ~~decision~~ decisions affecting the overall administration of the Business
6 Enterprises Program. The Division and the ~~Elected Committee of Vendors~~ ECBV shall comply with ~~the terms and~~
7 ~~conditions set forth 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]~~ Operators and licensees who elect the members
13 of the ECBV ~~[to]~~ shall ensure that ~~[the]~~ those 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]
16 licensees shall 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. _____.*

1 10A NCAC 63C .0509 is repealed through readoption 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._____.*

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~~ **shall** be considered by the
5 Division.

6

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

8 *Eff. October 1, 1978;*

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

10 *Readopted Eff._____.*

11

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** **shall be** responsible for the administration of the Business Enterprises
5 Program. It shall consider all recommendations forthcoming from the ~~committee~~, Elected Committee of Blind
6 Vendors, ~~which will act in an advisory capacity to the Division~~. If the Division does not adopt the views and positions
7 of the ~~committee~~ Elected Committee of Blind Vendors on a particular issue, it shall give written notice to the
8 committee of the decision 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. _____.*

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~~ **A** Business Enterprises operator ~~must~~ shall:

- 7 (1) ~~perform~~ faithfully and to the best of his ability the necessary duties in connection with ~~to~~ **ensure**
8 the operation of ~~the a~~ Business Enterprises facility in accordance with the rules of the Commission
9 for the ~~Blind~~ **Blind**, ~~and standards issued pursuant thereto and~~ the contractual agreement between
10 the Division and the operator, and the terms and conditions of the permit or contract with the
11 building or property on which the ~~host facility~~ facility is located;
- 12 (2) operate the facility in accordance with all applicable health laws and ~~Rules;~~ **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] 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~~ **shall not be** 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] facility,** and the Division;
- 21 (6) maintain a neat, business-like appearance while working at the Business Enterprises [facility,]
22 [facility] and [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 15th of the month
28 following the reporting ~~[month;]~~ **month.** ~~[assistance]~~ **Assistance** can be provided with the electronic
29 submission of the 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 15th 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] 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,] consultation and for conducting audits and record keeping [reviews] reviews, as
36 required by this Subchapter;

1 (13) be available for all appointments with the Division staff members to allow inspection, advice, record
2 ~~reviews~~ reviews, and consultation to support operations, at the convenience of both parties;

3 (14) not subcontract management of the Business Enterprises facility except as approved in writing by
4 the ~~Division,~~ Division;

5 (15) take appropriate actions to correct deficiencies noted on Business Enterprises facility audits or
6 reviews within 15 business ~~days,~~ days after receiving notification of the deficiencies; and

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

9 (A) the facility telephone number;

10 (B) the address to which Business Enterprises correspondence shall be delivered; and

11 (C) emergency contact information

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

16 ~~(c) The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility,~~
17 ~~and shall conduct the facility in an orderly, business-like manner.~~

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

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

22
23 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*

24 *Eff. February 1, 1976;*

25 *Readopted Eff. November 16, 1977;*

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

27 *Readopted Eff. _____.*

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** **shall ensure** that security and safety measures are carried out in accordance with
5 good 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

1 10A NCAC 63C .0604 is repealed through readoption 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._____.*

1 10A NCAC 63C .0701 is repealed through readoption 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. _____.

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 business enterprises facility to be used for the
6 purposes outlined in 34 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.~~ Administration, as set forth in 34 C.F.R. 395.9.

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, basis shall be refunded
11 on 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~~ based on the set-aside fund balance and
13 program goals and objectives and shall be determined by the Division ~~in conjunction with~~ after consultation with
14 operators and the NC Commission for the Blind.

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

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

19

20 *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*

21 *U.S.C. sec. 107;*

22 *Eff. February 1, 1976;*

23 *Readopted Eff. November 16, 1977;*

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

25 *1, 1980. 1980:*

26 *Readopted Eff. _____.*

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 ~~34 C.F.R. 395.8 is incorporated by reference with subsequent amendments and editions, and may be found at no cost~~
24 ~~at <https://www.govinfo.gov/content/pkg/CFR-2018-title34-vol2/pdf/CFR-2018-title34-vol2-sec395-8.pdf>~~

25
26 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;*

27 *Eff. October 1, 1978;*

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

29 *Readopted Eff. _____.*

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] in~~ or regain employment.

15 (b) It ~~is~~ shall be presumed that the applicant can benefit in terms of an employment outcome from the provision of
16 vocational rehabilitation services unless it can be demonstrated through clear and convincing evidence that the
17 applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to
18 the severity 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~~ shall be presumed eligible for vocational rehabilitation services; however, the applicant ~~must~~ shall
21 intend to achieve 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~~ shall be 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.

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~~ **profession**, or employment
6 are achieved.

7 (b) Training provided by the Division ~~includes~~ **shall include** vocational, prevocational, personal adjustment training,
8 and other rehabilitation training ~~which that~~ contributes to the determination of the rehabilitation potential or to the
9 individual's personal and vocational ~~adjustment; it covers~~ **adjustment and it shall cover** training provided directly by
10 the Division or procured from other public 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 **of consumers** under the following terms
14 and conditions:

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

18 (2) Requests for support ~~will~~ **shall** 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~~ **semester or quarter** requirements when necessary to accommodate the special
25 training needs of consumers with severe ~~disabilities;~~ **disabilities**.

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

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

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

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

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

24
25 *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);
26 Eff. February 1, 1976;
27 Readopted Eff. November 16, 1977;
28 Amended Eff. February 1, 1982;
29 Temporary Amendment Eff. August 1, 2001;
30 Amended Eff. August 1, ~~2002.~~ 2002;
31 Readopted Eff._____.

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 **the** economic need **for of** 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, Act, (SSA)**, the Division of Services for the Blind shall not apply a financial needs tests or require the financial
11 participation of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive
12 services 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 services**, except those non-
15 assessed services that are provided during an exploration of the applicant's abilities, capabilities, and
16 capacity to perform in work situations through the use of trial work experiences or an extended
17 evaluation and an assessment by personnel skilled in rehabilitation technology;
- 18 (2) **an** assessment for determining rehabilitation needs by a qualified vocational rehabilitation
19 counselor;
- 20 (3) vocational rehabilitation counseling and guidance, including information and support services to
21 assist an applicant or consumer in exercising informed choice; **and**
- 22 (4) tuition and supplies for Community Rehabilitation Program training;
- 23 (5) tuition and fees for:
- 24 (A) community **college/college college and university parallel educational** and vocational
25 programs up to the catalog rate; and
- 26 (B) post-secondary education up to the maximum rate charged for the North Carolina public
27 university system.
- 28 The Division shall require eligible consumers applying for training programs listed in Parts
29 (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The
30 Division may grant an exception to the rate for tuition and required fees for post-secondary
31 education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the
32 special training needs of severely disabled individuals who must be enrolled in special
33 programs designed for severely physically disabled students;
- 34 (6) interpreter **services services**, including sign language and oral interpreter services for applicants or
35 consumers who are deaf or hard of **hearing hearing**, and tactile interpreting services for applicants
36 or consumers who are deaf-blind;
- 37 (7) reader services, rehabilitation teaching services, and orientation and mobility services;

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

29 (c) The following services shall be provided by the Division of Services for the Blind and shall be conditioned on
30 economic need:

- 31 (1) physical and mental restoration services (~~medical~~ that are medical services other than ~~diagnostic~~);
32 diagnostic;
- 33 (2) maintenance for additional costs incurred while participating in rehabilitation;
- 34 (3) transportation in connection with ~~the rendering of~~ rendering any vocational rehabilitation service
35 except where necessary in connection with determination of eligibility or nature and scope of
36 services;

- 1 (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation
 2 of the consumer with a disability;
- 3 (5) post-employment services necessary to assist consumers with visual disabilities to maintain, ~~regain~~
 4 ~~regain~~, or advance in ~~employment~~ ~~employment~~, except for those services not conditioned on
 5 economic need listed in Paragraph (b) of this Rule;
- 6 (6) fees necessary to obtain occupational licenses;
- 7 (7) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of
 8 this Paragraph;
- 9 (8) expenditures for short ~~periods~~ ~~periods~~, not to exceed 30 days of medical care for acute conditions
 10 arising during the course of vocational ~~rehabilitation~~, ~~rehabilitation~~ ~~which that~~ if not cared for, will
 11 constitute a hazard to the achievement of the vocational rehabilitation objective; and
- 12 (9) other goods and services not prohibited by the Act (~~P.L. 102-569~~), (~~P.L. 102-569~~) ~~which that~~ can
 13 reasonably be expected to benefit an individual with a disability in terms of his employability or
 14 independent living skill development.
- 15 (d) Notwithstanding Paragraph (c) of this Rule, the following services ~~are not~~ ~~shall not be~~ subject to economic need
 16 for individuals being served through the Vocational Rehabilitation Program:
- 17 (1) books and other training materials required for ~~post-secondary~~ ~~post-secondary~~ training; and
- 18 (2) rehabilitation ~~technology~~ ~~technology~~, including telecommunications, sensory aids, and other
 19 technological aids and devices for consumers who have an Individualized Plan for Employment
 20 (~~IPE~~); (~~IPE~~) who are working toward an employment goal that requires specified technology to
 21 attain, regain, or maintain employment and who have the capability to use the equipment.
- 22 (e) The Division of Services for the Blind shall publish the standard ~~as determined by the Legislature~~ for measuring
 23 the financial need of consumers with respect to normal living ~~requirements~~ ~~requirements~~, ~~and~~ for determining their
 24 financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency
 25 supplementation required to procure the necessary services.

27 *History Note:* Authority G.S. 111-28; ~~34 C.F.R. 361.5~~; 34 C.F.R. 361.48; ~~34 C.F.R. 361.5~~; 34 C.F.R. 361.52; 34
 28 C.F.R. 361.54; P.L. 102-569, Section 103; S.L. 2009-475;
 29 Eff. February 1, 1976;
 30 Amended Eff. August 1, 1976;
 31 Readopted Eff. November 16, 1977;
 32 Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990; April 1, 1990;
 33 Temporary Amendment Eff. August 1, 2001;
 34 Amended Eff. August 1, 2002;
 35 Emergency Amendment Eff. September 23, 2009;
 36 Temporary Amendment Eff. November 16, 2009 to expire on June 30, 2012(See G.S. 150B-21.1B);
 37 Amended Eff. July 1, ~~2012~~- 2012;

Readopted Eff.