

SUBCHAPTER 63C - BUSINESS ENTERPRISES PROGRAM

SECTION .0100 – BUSINESS ENTERPRISES PROGRAM

10A NCAC 63C .0101 PURPOSE AND DEFINITIONS

As used in this Subchapter:

- (1) "Blind person" or "legally blind" means a person who meets the criteria defined in 34 CFR 395.1(c) and G.S. 111-11.
- (2) "Division" or "DSB" means Division of Services for the Blind.
- (3) "Blind licensee" or "licensee" means a blind person licensed by the Division to operate a Business Enterprises facility on federal, State, or other property.
- (4) "Blind operator" or "operator" means a blind licensee who is operating a Business Enterprises facility on federal, State, or other property.
- (5) The "Business Enterprises Program (BEP)" means a program that provides training and the opportunity for blind individuals to achieve self-employment through the operation of vending and food service facilities on federal, State, and other properties.
- (6) "Business Enterprises facility" "or facility" means any vending and food service facility operated by the North Carolina Business Enterprises Program as defined in 34 CFR 395.1.
- (7) "Elected Committee of Blind Vendors (ECBV)" means a committee as defined in 34 CFR 395.14 whose members are elected by the Business Enterprises operators.
- (8) "Active participation" means communications and negotiations between the Elected Committee of Blind Vendors and the Division in matters pertaining to major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprises Program prior to implementation.
- (9) "Host facility" means the sponsor or owner of a site upon which a Business Enterprises facility is located.

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; February 1, 1986; October 1, 1978; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. October 1, 2018.

10A NCAC 63C .0102 RESPONSIBILITY

(a) The Division shall assure that:

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

(b) The Division shall furnish to each operator copies of documents relevant to the operation of the Business Enterprises facility, including the 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, upon request, explain these documents to each operator. Documents shall be made available in the requested accessible format.

(c) The Division shall 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;
Readopted Eff. October 1, 2018.

10A NCAC 63C .0103 BUSINESS ENTERPRISES FACILITY EQUIPMENT: MERCHANDISE: AND SUPPLIES

- (a) The Division shall furnish each Business Enterprises facility with the equipment, initial stock, and initial supplies that are necessary to operate the unit.
- (b) Except as set forth in Paragraph (c) of this Rule, the right, title to, and interest in Business Enterprises equipment, merchandise, petty cash, and all other assets used in the program shall be vested in the Division only and may be used and disposed of by the Division for program purposes only, and in accordance with state and federal law.
- (c) If the Division and operator agree in writing that the right, title to, and interest in Business Enterprises stock will be vested in the operator, then the Division shall retain a first option to repurchase such stock and, in the event the operator dies, for any other reason ceases to be an operator, or transfers to another vending facility, the ownership of such stock shall become vested in the Division for transfer to a successor operator subject to an obligation of the Division to pay to such operator or the operator's heirs the fair value of the stock. The Division's obligation to pay the fair value of the stock to the operator or the operator's heirs under this Rule shall be reduced by the amount of any outstanding debt owed by the operator to the Division.
- (d) The Division shall maintain all Business Enterprises equipment in good repair and in attractive condition, and shall replace worn-out or obsolete equipment as required to assure the continued successful operation of the facility. The licensed operator of a facility shall take the initiative in identifying needed equipment repairs and replacement.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.6; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Amended Eff. October 1, 2018.

10A NCAC 63C .0104 TRAINING PROGRAM

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

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.11; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Amended Eff. October 1, 2018.

SECTION .0200 - LICENSING AND PLACEMENT

10A NCAC 63C .0201 ISSUANCE OF LICENSES

The Division, through the Business Enterprises Program, shall license blind individuals who meet eligibility requirements for the Business Enterprises Program. The licensee shall signify acceptance of the licensing by placing their signature or mark on the license. This license shall be issued for an indefinite period but shall be subject to suspension or termination if, after affording the operator or licensee an opportunity for a full evidentiary hearing, the Business Enterprises facility is not being operated in accordance with the rules in this Subchapter, the terms and conditions of the facility permit, contract or agreement and the terms and conditions of the operator agreement.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Amended Eff. October 1, 2018.*

10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING

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

(b) To be considered for training and licensure, the prospective licensee shall:

- (1) meet the definition of legally blind in 34 CFR 395.1(c) and G.S. 111-11;
- (2) be at least 21 years of age;
- (3) be physically able to perform all the duties as further detailed in this Subchapter;
- (4) be evaluated for and demonstrate proficiency of skill in basic mobility, mathematics, basic computer skills, verbal and written communications, reading comprehension, and basic food service practices;
- (5) be familiar with the rules and regulations for Business Enterprises Program, successfully complete the Business Enterprises training program sponsored by the Division, and be certified by the Division as capable of operating a Business Enterprises facility;
- (6) be a citizen of the United States and reside in North Carolina;
- (7) not have previous convictions of misdemeanors involving crimes of dishonesty or of any felony; and
- (8) submit to and pass a drug and alcohol screening provided by the Division.

*History Note: Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107; 143B-157;
Eff. October 1, 1978;
Amended Eff. January 1, 2009; August 1, 2002; August 1, 1990; February 1, 1986; June 1, 1982;
Readopted Eff. October 1, 2018.*

10A NCAC 63C .0203 SUSPENSION OR TERMINATION OF LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity to appeal the decision as set forth in Section .0400.

(b) Licenses to licensees and operators shall be terminated if the licensee or operator:

- (1) no longer meets the definition of legally blind pursuant to Rule .0101 of this Subchapter;
- (2) withdraws from the program and sends written notification to the Division;
- (3) is convicted of a misdemeanor involving crimes of dishonesty or any felony;
- (4) provides false information to the Division pertaining to eligibility requirements set forth pursuant to Rule .0202 of this Subchapter;
- (5) unlawfully possesses firearms or lethal weapons on the job;
- (6) uses Business Enterprises equipment purchased with program funds or a Business Enterprises facility to operate another business; or
- (7) if an operator's license is suspended 3 times within a consecutive 24-month period in accordance with Paragraph (c) of this Rule, regardless of the reason for suspension.

(c) Licenses to operators shall be suspended if the operator:

- (1) fails to operate the Business Enterprises facility in accordance with the operator agreement for three or more consecutive months;
- (2) commits willful acts in the Business Enterprises facility or on the grounds of the facility to create a threat to the health and safety of facility staff, customers or the general public;
- (3) reports to a Business Enterprises facility under the influence of alcohol or any controlled substance or partakes of such on the job. This shall not include unanticipated effects from the ingestion of prescription medications taken in accordance with the directions of a doctor;
- (4) fails to personally operate the awarded facility, as set forth in the operator agreement, unless prior written approval to operate the facility in another manner has been obtained from the Division. This requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;

- (5) fails three times during the calendar year to pay set-aside and liability fees and health insurance premiums and phone bills, if applicable, to the Controller's Office by the 15th day of the month following the month in which the business was transacted;
 - (6) fails to preserve financial and other records pertaining to the operation of the Business Enterprises facility as required by Rule .0601(a)(8) of this Subchapter;
 - (7) fails to respond to requests made by an auditing authority conducting audits pursuant to State or federal law, as required by this Subchapter;
 - (8) fails to maintain liability and workers compensation insurance coverage as required by law and by Rule .0607 of this Subchapter;
 - (9) removes Business Enterprises equipment purchased with program funds from the facility without written authorization from the Division;
 - (10) fails to comply with federal or State law prohibiting discrimination in hiring and service to customers;
 - (11) fails to comply with federal or State tax laws for individuals who are self-employed if this violation relates to the Business Enterprises facility. This suspension shall only occur if there has been a final adjudication of the violation by State and federal authorities; or
 - (12) fails to comply with the operator's responsibilities as required by Rule .0601 of this Subchapter.
- (d) Prior to the suspension of an operator's license, the Division shall provide the operator with a written corrective action plan. The Division and the operator shall both sign the corrective action plan. The corrective action plan shall include:
- (1) the specific provision in Paragraph (c) of this Rule that the operator has violated, the specific provision contained in the operator's agreement that has been violated, or the specific provision otherwise contained in this Subchapter that has not been complied with;
 - (2) the specific corrective actions that the operator must take to cure the violation identified in Subparagraph (d)(1) of this Rule, including participation in training or receipt of technical assistance provided by the Division, if necessary; and
 - (3) the time frame in which the operator must cure the violation, which shall not exceed 90 days. The time frame in which to cure the violation may be extended if actions are being taken to resolve the violations pursuant to a written agreement between the operator and Division.
- (e) If an operator fails to complete the corrective action plan to cure the violation within the time set forth in the corrective action plan, or otherwise refuses to sign a corrective action plan, the Division shall suspend the license of the operator. The length of a suspension shall not exceed 60 days.
- (f) During the time period in which an operator's license is suspended, the Division shall identify another operator to assume responsibility for the locations of the suspended operator.

History Note: Authority G.S. 111-27; 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1986; Readopted Eff. August 1, 2020.

10A NCAC 63C .0204 FILLING OF VACANCIES

- (a) The Division shall send a notice of vacant facilities to all operators and licensees within the last 10 business days of the month. The notice shall provide a description of the vacancy, who to contact for more information, the address where the application may be submitted, and the deadline for receipt of application. The deadline specified in the notice shall be no earlier than that 10th day of the following month, or the first business day thereafter. In the event of an emergency vacancy, including death or illness of an operator, the schedule for sending notices of vacant facilities, conducting interviews, and awarding vacancies set forth in this Rule may be changed as determined by the Chief of Business Enterprises and the chairman of the Elected Committee of Blind Vendors or his or her designee.
- (b) An individual shall be eligible to apply for a vacancy if the individual currently possesses the license level required by the vacant facility or, if the training is not currently provided by the Division or otherwise available for the license level required for the vacant facility, the individual shall be eligible to apply if the applicant holds the next lower license level.
- (c) An individual who has received written notice from the Division that the individual owes money to the Business Enterprises Program and still owes that money is only eligible to apply for a vacancy if:
 - (1) the individual has a repayment plan in place to repay the money he or she owes and is in compliance with that repayment plan; or

- (2) there is a pending grievance as set forth in Section .0400 in this Chapter.
- (d) An individual shall not be eligible to apply for a vacancy if the individual has failed to appear for a scheduled interview twice during the preceding 12 months. In this instance, the individual will not be eligible to apply for a vacancy for 24 months from the date of the last scheduled interview. This provision shall not apply if the applicant withdrew from the interview by providing notice to the Division 48 hours prior to the scheduled appearance or if prior to the interview, the individual provides information to the Division documenting that the individual is unable to attend due to health reasons.
- (e) Operators and licensees who wish to apply for any vacancy shall submit an application to the address contained in the notice or to office of the Chief of Business Enterprises via electronic mail, personal delivery, the United States Postal Service, or commercial delivery services.
- (f) The application shall include the applicant's name, address, telephone number, the name of the current BEP facility assigned to the applicant if applicable, the name of the facility that the applicant is applying for, the applicant's signature, and the date the application is signed.
- (g) All applications shall be received by the Division no later than the deadline date identified in the notice. "Received" for the purpose of this Paragraph means that the application is in the possession of the Division. If the application is not received by the Division by the deadline, the applicant shall not be eligible to interview for the vacancy. However, if the Division does not receive the application by the deadline, an applicant may demonstrate compliance with this Paragraph by demonstrating he or she submitted the application in compliance with Paragraph (d) and any failure or delay in the delivery was due to causes beyond the applicant's control.
- (h) At least 10 business days prior to the interview, the Business Enterprises Consultant who works with the applicant shall calculate the applicant's points for sanitation, seniority, and financial performance as set forth in Subparagraphs (i)(1), (2), and (3) of this Rule and inform the applicant of his or her point total in writing and shall include with that communication a description of any ways in which the Business Enterprises Consultant noted that the applicant failed to provide the information required by Subparagraphs (i)(1), (2), and (3) of this Rule. The applicant shall have five business days from his or her receipt of the notice from the Business Enterprises Consultant to request any adjustments to the point total. As part of the request, the applicant must provide to the Business Enterprise Consultant all supporting information with the request, including documents required to complete a new financial analysis and operation standard tool (FAOS) if another FAOS is requested by the applicant. The applicant's points for sanitation, seniority, and FAOS shall be shared with all members of the interview committee.
- (i) The Business Enterprises Consultant shall assign points to each applicant for sanitation, seniority, and financial performance as follows:
- (1) Five sanitation points may be awarded based on the sanitation grades for the Business Enterprises facilities that were operated by an applicant, as follows:
 - (A) The applicant shall verify with the Business Enterprises Consultant that he or she has copies of every sanitation inspection form from the specified period so that the points can be calculated.
 - (B) One point shall be awarded for each sanitation grade point above 90, which shall be determined by averaging all sanitation scores received during the previous 24 months.
 - (C) Any points deducted on the sanitation review reports for deficiencies that are the responsibility of facility management, pertaining to the condition of bathrooms, floors, ceilings and walls, shall be added in the calculations by the Business Enterprises Consultant.
 - (D) An applicant who is a licensee with a score of 90 percent or greater on his or her most recent National Restaurant Association's ServSafe exam shall be assigned three sanitation points.
 - (2) A maximum of five seniority points may be awarded based on the number of years an applicant has worked as an operator in the Business Enterprises Program. The applicant shall be awarded 0.2 points for each 12 months worked as an operator in the Business Enterprises Program. The cutoff date for accruing time in the facility shall be the end of the month when the vacancy is advertised.
 - (3) A maximum of 50 financial performance points may be awarded. Financial performance for applicants who are operators shall be based on the facilities assigned to the operator. Financial performance shall be calculated by analyzing the average monthly sales and average gross profit percentage for sales during the 12-month period ending with the last day of the month preceding the month in which the vacancy is advertised. The cut-off date for calculating financial performance shall be the 12-month period ending with the last day of the month in which the

vacancy is advertised. The FAOS shall be utilized to help determine the financial performance of the facility. A FAOS shall be completed by the Business Enterprises Consultant for a facility every two years to determine the optimum sales percentage and optimum gross profit percentage without consideration for theft or waste. Eighty-five percent of the optimum sales percentage and optimum gross profit percentage shall be the standard for each Business Enterprises facility.

- (A) If an applicant who is not currently operating a Business Enterprises facility applies for a vacancy within 12 months of leaving a facility, the FAOS for the applicant's prior facility shall be used for the calculations in this Subparagraph if the FAOS was completed within the required two-year period.
- (B) The applicant's Business Enterprises Consultant shall determine the FAOS points by tabulating all the invoices for purchases for resale for that facility for the 12-month period ending with the last day of the preceding month in which the vacancy is advertised. The Business Enterprises Consultant shall calculate the month sales average for each of the 12 months for the numbers identified in the following Subparts and using those monthly averages, determine the three months that are closest to the monthly average to allocate points as follows:
 - (i) applicants shall receive 20 points for meeting or exceeding 85 percent of their sales standard;
 - (ii) applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit percentage standard;
 - (iii) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum sales percentage;
 - (iv) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum gross profit percentage;
 - (v) applicants who are operators of a Business Enterprises military facility at the time of application shall be assigned 50 FAOS points;
 - (vi) applicants who are licensees at the time of application shall be assigned 40 FAOS points; and
 - (vii) applicants who have operated a Business Enterprises facility for less than 6 months prior to the cut-off date for calculating financial performance shall be assigned 40 FAOS points.

(j) The Interview Committee shall consist of:

- (1) the Chief of the Business Enterprises Program or his or her designee;
- (2) a Business Enterprises Program Consultant or Business Enterprises Program designee;
- (3) the vice-chair of the Elected Committee of Vendors (ECBV) or ECBV designee; and
- (4) the chair of the ECBV transfer and promotion subcommittee or ECBV designee.

(k) The Interview Committee shall interview all eligible applicants who present for the scheduled interview. The Interview Committee shall select 15 questions developed by the Interview Committee prior to the interview. A maximum of two points per question may be awarded for a maximum total of 30 points by each Interview Committee member participating in the interview. The interview questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. There shall be at least two math questions. A calculator shall be provided by the Interview Committee, although applicants may bring their own calculator.

(l) An applicant shall not sit on the Interview Committee for a location where he or she is applying or if a member of his or her immediate family has applied for a vacant facility. For the purpose of this Rule, "immediate family" means a spouse, parent, or child, as well as siblings, and step, half and in-law relationships. If the vice-chair of the ECBV or the chair of the ECBV transfer and promotions committee are disqualified from serving as a result of this Rule, the vice-chair of the ECBV and the chair of the ECBV transfer and promotions committee shall jointly select two members of the Elected Committee of Blind Vendors to sit on the Interview Committee.

(m) The interview shall be conducted and evaluated as follows:

- (1) all applicants shall be notified in writing of the date, time, and place of their interview;
- (2) the interview shall be face-to-face. For the purposes of this Rule, a conference call shall not be considered face-to-face; and
- (3) each member of the Interview Committee shall evaluate the applicant's response to each interview question. The applicant shall receive up to two points per question as determined by committee members.

- (n) The Interview Committee shall calculate the point total under this Rule for each applicant, which shall equal the sum of the points awarded to the applicant for sanitation, seniority, FAOS, the interview score pursuant to Paragraphs (i) and (k) of this Rule. The applicant with the highest point total shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest point total. In the case of an exact tie, the Division shall award the location to the applicant that has worked the longest period of time as an operator in a Business Enterprises facility.
- (o) The Division shall notify each applicant by telephone after the conclusion of interviews whether the applicant was awarded the location and shall confirm the notification in writing.
- (p) The location shall not be filled for 10 business days following the Division's providing notice to all applicants pursuant to G.S. 150B-23(f) of the results of the award process, in order to allow time for administrative appeals to be filed. If an appeal is filed, the location shall be filled on a conditional basis until the appeal is resolved. For the purposes of this Rule, "conditional basis" means that the operator may manage the location until the appeal has been resolved. If there is only one applicant for a location, the 20 business days waiting period shall not apply.
- (q) Upon being awarded a location, the applicant shall have 20 business days to assume the responsibilities for the operation of the vacant facility. The Division shall agree to a different time frame if adhering to the 20 business days' timeframe would cause a hardship to the applicant awarded the facility.
- (r) Applicants shall be reimbursed for their expenses to come to the interview at the State's per diem rates. Applicants who are receiving vocational rehabilitation services shall be reimbursed through the vocational rehabilitation program. The Business Enterprises Program shall only reimburse an applicant for three interviews per year. After three interviews, applicants shall bear their own expenses.
- (s) Applicants not selected may file an administrative appeal as provided for in Section .0400 of this Subchapter. The time limit to file an appeal shall be 10 business days from the date that the applicant receives a notice of the results of the award process that conforms to the requirements of G.S. 150B-23(f).

History Note: Authority G.S. 111-27; 111-27.1; 143B-157; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986; February 1, 1981; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. August 1, 2020.

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

- (a) Each licensee or operator who accepts a Business Enterprises assignment shall enter into an operating agreement with the Division upon initial placement and upon subsequent reassignment.
- (b) When a permit or contract with a host facility is developed, it shall become a part of the operator agreement and the operator shall conduct the business in accordance with the provisions of that permit or contract.
- (c) The operator agreement shall include provisions which specify:
- (1) responsibilities of the licensed operator required by the rules in this Subchapter;
 - (2) responsibilities of the Division required by the rules in this Subchapter;
 - (3) the licensed operator will receive the net proceeds in accordance with 34 CFR 395.9 from the Business Enterprises facility he or she operates in accordance with Section .0700 of this Subchapter;
 - (4) the operator's right to terminate the agreement at any time;
 - (5) the agreement will terminate upon termination of the permit or contract with the host facility;
 - (6) that the agreement will terminate upon failure of the licensed operator to operate the Business Enterprises facility in accordance with the agreement or the rules in this Subchapter or applicable federal, State, or local laws or regulations;
 - (7) the agreement will terminate upon the closing of a facility that offers no possibility of being profitable.

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; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1984; February 1, 1983; Readopted Eff. October 1, 2018.

10A NCAC 63C .0206 CONFIDENTIAL INFORMATION

All information and records pertaining to participants in the Business Enterprises Program shall be confidential and may not be revealed except in the administration of the program, by the consent of the participant, or as otherwise required by law.

History Note: Authority G.S. 111-27; 34 C.F.R. 361.49; 20 U.S.C. Sec. 107a et seq., as amended;
Eff. October 1, 1978;
Recodified from .0409(f) effective May 30, 1984;
Amended Eff. February 1, 1986;
Readopted Eff. October 1, 2018.

SECTION .0300 - SPECIAL PROVISIONS

10A NCAC 63C .0301 HEALTH INSURANCE

History Note: Authority G.S. 111-27; 20 U.S.C. sec. 107a et seq., as amended;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. April 1, 1990; October 1, 1978;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0302 TEMPORARY CLOSING

History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; October 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Repealed Eff. October 1, 2018.

10A NCAC 63C .0303 MOVING EXPENSES

History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE

10A NCAC 63C .0401 PURPOSE

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;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984;
Repealed Eff. October 1, 2018.

10A NCAC 63C .0402 POLICY

- (a) Every operator or licensee or the ECBV has the right to present a problem or appeal free from interference, restraint, coercion, discrimination, or reprisal. This Rule shall be covered fully during orientation procedures for new operators or licensees.
- (b) When presenting an appeal, an operator or licensee or the ECBV may be accompanied by a person or persons of his or her choice.

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;
Eff. October 1, 1978;

*Amended Eff. February 1, 1984, February 1, 1981;
Recodified Paragraph (f) to Rule .0212 Eff. May 30, 1984;
Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1986;
Readopted Eff. October 1, 2018.*

10A NCAC 63C .0403 PROCEDURE

(a) A licensee, operator, or the ECBV dissatisfied with any action or inaction taken by the Division related to the Business Enterprises Program may request an informal review by the Operator Relations Committee. Participation in an informal review is not required to obtain a full evidentiary hearing, nor does participation in an informal review waive any right to obtain a full evidentiary hearing.

- (1) When a licensee, operator, or the ECBV wishes to request an informal review by the Operator Relations Committee, the licensee, operator, or ECBV shall submit a written request to the Business Enterprises Program Chief. The licensee, operator, or the ECBV shall have 20 business days after the action or inaction taken by the Division that they are dissatisfied with to request an informal review.
- (2) The written request of the licensee, operator, or ECBV shall include:
 - (A) their name, address, and preferred means of receiving written communication with the Division;
 - (B) a statement that they are requesting an informal review;
 - (C) a statement explaining the actions or inactions with which they are dissatisfied; and
 - (D) a statement explaining the resolution sought by the licensee, operator, or ECBV.

This request shall be transmitted to the Business Enterprises Program Chief personally, electronically, or by certified mail, return receipt requested.

- (3) The licensee, operator, or the ECBV shall be notified of the date and location of the informal review at least five business days in advance of the informal review. The informal review shall be conducted within 25 business days of receipt of the request. The Operator Relations Committee shall issue a written decision within 10 business days after the informal review is conducted and mail the decision to the licensee, operator, or ECBV and the Division.
 - (4) The Division shall review the decision of the Operator Relations Committee and shall notify the licensee, operator, or ECBV in writing whether the Division affirms or overrules the decision within five business days of receipt of the decision.
 - (5) A request for an informal review under this Rule shall have the effect of suspending the time limitation for filing a petition for contested case hearing pursuant to G.S. 150B-23 and other provisions of Chapter 150B, Article 3 until the later of the following:
 - (A) the licensee, operator, or the ECBV receives written notice of the Division's final decision regarding the informal review; or
 - (B) the licensee, operator, or the ECBV withdraws its request for informal review
- (b) Notwithstanding any other provision in this Rule, a licensee, operator, or the ECBV dissatisfied with any action or inaction taken by the Division related to the Business Enterprises Program may request a full evidentiary hearing by filing a petition for contested case hearing with the Office of Administrative Hearings. Such a request for a full evidentiary hearing shall be filed within the time limitation contained in G.S. 150B-23(f).
- (1) This hearing shall be held in accordance with G.S. 150B, Article 3.
 - (2) If the dispute(s) is not resolved to the satisfaction of the licensee, operator, or the ECBV after the conclusion of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel in accordance with 34 C.F.R. 395.13.

*History Note: Authority G.S. 111-27; 111-27.1; 143B-157; 150B-23; 20 U.S.C. 107b-1; 20 U.S.C. 107d-1;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983;
December 1, 1981;
Readopted Eff. August 1, 2020.*

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

10A NCAC 63C .0501 ELECTION

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107; Eff. October 1, 1978;
Amended Eff. August 1, 2002; May 1, 1996; February 1, 1986;
Repealed Eff. October 1, 2018.

10A NCAC 63C .0502 COMMITTEE SIZE

10A NCAC 63C .0503 NOMINATIONS AND ELECTIONS

10A NCAC 63C .0504 TERM OF MEMBERSHIP

10A NCAC 63C .0505 CONSECUTIVE TERMS

History Note: Authority G.S. 111-13; 111-27; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended; Eff. October 1, 1978;
Amended Eff. August 1, 2002; April 1, 1990; July 1, 1987; June 1, 1983;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0506 ORGANIZATION AND OPERATION

(a) The Division shall provide for the biennial election of a State Elected Committee of Blind Vendors (ECBV) that, to the extent possible, shall be fully representative of all blind licensees and operators in the Business Enterprises Program on the basis of such factors as geography and vending facility type, with a goal of providing for proportional representation of blind vendors on federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The ECBV membership shall be composed of operators who represent all licensees and operators in the Business Enterprises Program, as elected based on the four geographic regions and the one federal region that encompasses all federal facilities. Two representatives shall be elected from each designated ECBV region.

(c) The term of office for ECBV members shall be two years beginning on April 1 following the election. Each region shall have one term expire in even-numbered years and one term expire in odd-numbered years. The ECBV members may serve unlimited terms.

(d) Unexpired terms in the elective offices shall be filled by majority vote of the ECBV. Filling an unexpired term on the ECBV shall not be considered countable time toward the two-year term of office.

(e) The officers of the ECBV shall be a chair and a vice-chair, as elected by the ECBV from among ECBV members.

(f) The ECBV chair and vice-chair may serve unlimited terms.

(g) The ECBV shall hold quarterly business meetings and at other times upon the call of the chair with majority approval of the ECBV. The chair shall provide the Business Enterprises Program with a written meeting agenda ten business days before each meeting.

(1) The chair shall preside over all business meetings of the ECBV.

(2) The chair shall conduct meetings according to Roberts Rules of Order.

(3) A majority shall constitute a quorum.

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

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

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

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

(A) This subcommittee shall be elected by the ECBV from its members.

(B) The ECBV chair shall appoint temporary replacements to this subcommittee to fill vacancies until a new member is elected.

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

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

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

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; February 1, 1983; Readopted Eff. October 1, 2018.

10A NCAC 63C .0507 MEETINGS

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended; Eff. October 1, 1978; Amended Eff. May 1, 1996; February 1, 1983; Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0508 FUNCTIONS

(a) The ECBV shall actively participate with the Division in major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprises Program. The Division and the ECBV shall comply with 34 C.F.R. 395.14.

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

(c) ECBV relationship to operators and licensees.

- (1) Operators and licensees who elect the members of the ECBV shall ensure that those elected represent all operators and licensees.
- (2) The ECBV shall act as advocates for operators and licensees.
- (3) The ECBV, ECBV officers, ECBV members, operators, employees of an operator, or licensees shall not be employees of the Division.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; Readopted Eff. October 1, 2018.

10A NCAC 63C .0509 SUBCOMMITTEES

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; Repealed Eff. October 1, 2108.

10A NCAC 63C .0510 COMMUNICATION AND NOTICE

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended; Eff. October 1, 1978; Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0511 COMMITTEE INITIATIVE

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

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1986; Readopted Eff. October 1, 2018.

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

The Division shall be responsible for the administration of the Business Enterprises Program. It shall consider all recommendations forthcoming from the Elected Committee of Blind Vendors. If the Division does not adopt the views and positions of the Elected Committee of Blind Vendors on a particular issue, it shall give written notice to the committee of the decision reached, the actions taken, and the reasons therefore.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002;
Readopted Eff. October 1, 2018.

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

(a) A Business Enterprises operator shall:

- (1) ensure the operation of a Business Enterprises facility in accordance with the rules of the Commission for the Blind, the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the host facility including any amendments if provided to the operator. This requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;
- (2) operate the facility in accordance with all applicable public health laws and Rules;
- (3) purchase merchandise, price goods for sale as set forth in Rule .0608 of this Subchapter, purchase supplies for the facility, rotate stock, and control inventory in the Business Enterprises facility;
- (4) open and maintain a business bank account for the management of funds derived from the Business Enterprises facility;
- (5) submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month following the reporting month. Assistance shall be provided with the electronic submission of the report by the Business Enterprises Consultant upon request from the operator;
- (6) submit payment of all monthly fees, including set-aside and liability fees, health insurance premiums, and phone bill payments, if applicable, to the Controller's Office by the 15th of the month following the month in which the business was transacted;
- (7) keep all records supporting the monthly profit and loss report (D-sheet) for three calendar years;
- (8) provide records for the assigned facility to the Division upon request for reviews as required by this Subchapter. That may include cash sales deposit receipts, cash register tapes, monthly bank and credit card statements, invoices and receipts for purchases and expenses, weekly or monthly card reader reports, and payroll records;
- (9) be available for all appointments with the Division staff members, which will be scheduled at the convenience of both parties;
- (10) not subcontract management of the Business Enterprises facility except as approved in writing by the Division;
- (11) take actions to correct deficiencies noted on Business Enterprises facility audits or reviews within 15 business days after receiving notification of the deficiencies and a description of the corrective actions to be taken, unless an extension to this time frame has been agreed to by the Division and operator in writing; and
- (12) notify the Division of changes to the following no later than 10 business days after the change occurs:
 - (A) the facility telephone number;
 - (B) the address to which Business Enterprises correspondence is delivered; and
 - (C) emergency contact information.

(b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility and shall handle the proceeds as set forth in Section .0700 of the Subchapter.

History Note: Authority G.S. 111-27; 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;

*Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978;
Readopted Eff. August 1, 2020.*

10A NCAC 63C .0602 HOURS OF OPERATION

*History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; October 1, 1978;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.*

10A NCAC 63C .0603 SECURITY

The operator shall ensure that security and safety measures are carried out in accordance with good business practice and the requirements of each location.

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107a et seq., as amended;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. February 1, 1984; October 1, 1978;
Readopted Eff. October 1, 2018.*

10A NCAC 63C .0604 REPORTS

*History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Amended Eff. August 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; February 1, 1996; February 1, 1984; October 1, 1978;
Repealed Eff. October 1, 2018.*

10A NCAC 63C .0605 REPAIRS

- (a) Operators shall secure repairs to equipment not to exceed a dollar amount as determined by the Division on an annual basis.
- (b) If the repair rate exceeds the amount as determined by the Division, bids must be obtained and submitted to the Division for approval. The Division shall apply state purchasing procedures as found in 01 NCAC 05 under the State Division of Purchase and Contract.
- (c) If the operator is unable to secure bids, he shall contact the Division for assistance.

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Amended Eff. August 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; October 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63C .0606 EQUIPMENT: MERCHANDISE: SUPPLIES: CASH

- (a) Each operator shall sign a receipt for all equipment, merchandise, supplies, and cash for which he is entrusted when initially placed in a Business Enterprises facility, and shall be held accountable for those assets.
- (b) Each operator shall maintain the equipment assigned to him, and shall ensure that the equipment is used only for the purposes of operating the business.
- (c) All assets vested in the Division shall be safeguarded and protected.

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107;
Eff. October 1, 1978;*

*Amended Eff. August 1, 2002; February 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63C .0607 INSURANCE

(a) Each operator must maintain adequate bodily injury, property damage, and food products liability insurance as will protect the operator, anyone employed by the operator, and the Division against losses and claims arising out of the conduct of the business of the Business Enterprises facility. Each operator must also carry worker's compensation and unemployment insurance as required by state and federal law. Adequate coverage for liability insurance will be determined by the Business Enterprises Program Chief in consultation with the Elected Committee of Vendors and changes in limits shall be conveyed to the operators in writing with a 30-day advance notice.

(b) The costs of such insurance shall be a cost of operating the business of the Business Enterprises facility and taken into account as such in determining the net proceeds of the business.

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63C .0608 PRICING OF MERCHANDISE

(a) Each operator shall determine his own pricing structure commensurate with prevailing pricing of local competitors and shall not take advantage of customers through unfair pricing practices.

(b) Notwithstanding Paragraph (a) of this Rule, in Business Enterprises facilities where prices are determined in some manner by the contract between the Division and the location, the operator must comply with the terms of that contract.

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

SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS

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

*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;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; October 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Repealed Eff. October 1, 2018.*

10A NCAC 63C .0702 SET-ASIDE

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

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

(c) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation Services Administration, as set forth in 34 C.F.R. 395.9.

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

(e) Set-aside rates may be adjusted based on the set-aside fund balance and program goals and objectives and shall be determined by the Division after consultation with the operators and the NC Commission for the Blind.

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

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

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 U.S.C. sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; January 1, 1990; July 1, 1987; February 1, 1986;
July 1, 1980;
Readopted Eff. October 1, 2018.

10A NCAC 63C .0703 DISTRIBUTION OF PROCEEDS

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Amended Eff. December 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; April 1, 1990; October 1, 1978;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

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

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

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; February 1, 1986;
Readopted Eff. October 1, 2018.