

RRC STAFF OPINION

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

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203, .0204, .0403, and .0601

RECOMMENDED ACTION:

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

COMMENT:

At its September 2018 meeting, the RRC objected to the readoptions presented for Rules 10A NCAC 63C .0203 and .0601 and amendments to Rules 10A NCAC 63C .0204 and .0403.

The RRC objected to Rules .0204 and .0403 because the text presented to the RRC differed substantially from what was published in the Register. The agency responded to the objection by stating that it accepted the objection and determined that it would move forward with the changed language, rather than revert to what was originally published. In order to do so, the agency was required to republish the rules for a 60-day comment period pursuant to G.S. 150B-21.2.

The RRC objected to Rules .0203 and .0601 at its September 2018 meeting and again in January 2019 to the rewritten rules submitted in response to the objections. At its meeting in March 2019, the RRC approved the rewritten rules submitted, finding the rules were responsive to the objections. (See the attached Staff Opinion from March 2019 that addressed all objections and the responses specifically.) The RRC found that the revisions made to the rules in response to the objection were "substantial" and thus, the rules would need to be republished pursuant to G.S. 150B-21.12(c).

As the agency was required to publish all rules due to substantial change determinations, it published the four rules in the NC Register for a 60-day comment period. The agency published the rules in the March 2, 2020 Register and the comment period ended on May 1, 2020. The agency adopted these rules on July 7, 2020.

Amanda J. Reeder
Commission Counsel
Issued July 13, 2020

Staff notes that the versions of Rules .0203 and .0601 that are before you at this meeting are substantively the same as the versions you approved at your March 2019 meeting. (Rule .0203 has minor formatting changes; Rule .0601 has no changes from the March 2019 meeting).

Staff believes that the rewritten rules are responsive to the RRC's previous objections and is recommending approval of all rules.

Amanda J. Reeder
Commission Counsel
Issued July 13, 2020

1 10A NCAC 63C .0203 is readopted as published in 34:17 NCR 1655 with changes as follows:

2
3 **10A NCAC 63C .0203 ~~SUSPEND: TERMINATE LICENSE:~~ SUSPENSION OR TERMINATION OF**
4 **LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY**

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

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

13 ~~(b) [The license of a licensee.] Licenses to licensees and operators shall be terminated if the [licensee's vision is~~
14 ~~improved by conventional means to the point at which the licensee is not legally blind.] licensee or operator:~~

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

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

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

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

- 1 requirement shall not mandate the physical presence of the operator at the facility at all times of its
2 operation;
- 3 (5) fails three times during the calendar year to pay set-aside and liability fees and health insurance
4 premiums and phone bills, if applicable, to the Controller's Office by the 15th day of the month
5 following the month in which the business was transacted;
- 6 (6) fails to preserve financial and other records pertaining to the operation of the Business Enterprises
7 facility as required by Rule .0601(a)(8) of this [Subchapter.] Subchapter;
- 8 (7) fails to respond to requests made by an auditing authority conducting audits pursuant to State or
9 federal law, as required by this Subchapter;
- 10 (8) fails to maintain liability and workers compensation insurance coverage as required by law and by
11 Rule .0607 of this Subchapter;
- 12 (9) removes Business Enterprises equipment purchased with program funds from the facility without
13 written authorization from the Division;
- 14 (10) fails to comply with federal or State law prohibiting discrimination in hiring and service to
15 customers;
- 16 (11) fails to comply with federal or State tax laws for individuals who are self-employed if this violation
17 relates to the Business Enterprises facility. This suspension shall only occur if there has been a final
18 adjudication of the violation by State and federal authorities; or
- 19 (12) fails to comply with the operator's responsibilities as required by Rule .0601 of this Subchapter.
- 20 (e)[(d)] Licenses to operators may also be suspended or terminated for any of the following reasons:
- 21 (1) — Vision improves so that the operator is no longer eligible for licensing;
- 22 (2)[(1)] Extended illness [extended illness, defined as lasting at least three months,] occurs with medically
23 documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises
24 facility in a manner consistent with the needs of the location or other available locations in the
25 Business Enterprises Program;
- 26 (3) [(2)] Withdrawal [withdrawal of the operator from the program upon his written notification to the
27 Division;]
- 28 (4) — Gross misconduct or conduct so reprehensible as to bring discredit to the program;
- 29 (5) [(3)] Conviction [conviction] of a felony (Class A through E); [misdemeanor involving crimes of
30 dishonesty or any felony;]
- 31 (6) [(4)] Falsified [falsified] information pertaining to eligibility requirements;
- 32 (7) [(5)] Willful [willful] acts that would endanger the lives and property of others;
- 33 (8) [(6)] Possession of firearms or lethal weapons on the job; [site at a Business Enterprises facility;]
- 34 (9) [(7)] Reporting [reporting] to Business Enterprises assignment under the influence of alcohol or any
35 controlled substance or partaking of such on the job.;

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

20 (d) ~~Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the~~
21 ~~opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the~~
22 ~~seriousness of the situation, but shall not exceed a maximum of 60 days. Prior to the suspension of an operator's~~
23 ~~license, the Division shall provide the operator with a written corrective action plan. The Division and the operator~~
24 ~~shall both sign the corrective action plan. The corrective action plan shall include:~~

25 ~~(1) the specific provision in Paragraph (c) of this Rule that the operator has violated, the specific provision~~
26 ~~contained in the operator's agreement that has been violated, or the specific provision otherwise contained in~~
27 ~~this Subchapter that has not been complied with;~~

28 ~~(2) the specific corrective actions that the operator must take to cure the violation identified in [Paragraph]~~
29 ~~Subparagraph (d)(1) of this Rule, including participation in training or receipt of technical assistance provided~~
30 ~~by the Division, if necessary; and~~

31 ~~(3) the time frame in which the operator must cure the violation, which shall not exceed 90 days. The time~~
32 ~~frame in which to cure the violation may be extended if actions are being taken to resolve the violations~~
33 ~~pursuant to a written agreement between the operator and Division.~~

34 (e) ~~If an operator fails to complete the corrective action plan to cure the violation within the time set forth in the~~
35 ~~corrective action plan, or otherwise refuses to sign a corrective action plan, the Division shall suspend the license of~~
36 ~~the operator. The length of a suspension shall not exceed 60 days.~~

1 (f) During the time period in which an operator's license is suspended, the Division shall identify another operator to
2 assume responsibility for the locations of the suspended operator.

3
4 *History Note:* Authority G.S. 111-27; G.S. 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
5 Eff. October 1, 1978;
6 Amended Eff. August 1, 2002; February 1, ~~1986~~ 1986;
7 Readopted Eff. August 1, 2020.

1 10A NCAC 63C .0204 is amended as published in 34:17 NCR 1655 with changes as follows:

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

4 ~~(a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.~~

5 ~~(b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief~~
6 ~~of Business Enterprises.~~

7 ~~(c) Transfers and promotions shall be based on the following procedures:~~

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

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

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

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

20 ~~(5) After adding together the points from the sanitation, seniority, Financial Analysis/Operating~~
21 ~~Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3),~~
22 ~~(4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above~~
23 ~~60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to~~
24 ~~accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on.~~
25 ~~In the case of an exact tie, the applicant with the most time in the Business Enterprises Program~~
26 ~~shall be awarded the location.~~

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

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

35 ~~(8) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the~~
36 ~~last two years, and the applicant did not meet his financial analysis and operating standards for the~~
37 ~~last 12 months that his agreement was in effect, the applicant shall repeat the necessary on the job-~~

1 training. The Interview Committee may also recommend refresher course training to assure qualified
2 management.

3 ~~(9) Licensees/operators not selected may file an administrative appeal as provided for in Subchapter~~
4 ~~63C Section .0400. The fifteen day limit to file an appeal shall begin from the date the~~
5 ~~licensee/operator is informed by telephone of the results of the award.~~

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

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

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

18 ~~(13) An applicant who does not hold the required level of license for the vacancy may be awarded the~~
19 ~~facility contingent upon successfully completing the required training. Applicants who hold the~~
20 ~~required level of license but have not operated a facility at that level for at least two years shall~~
21 ~~complete refresher on the job training if the applicant did not meet his financial analysis and~~
22 ~~operating standards for the last 12 months that his agreement was in effect.~~

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

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

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

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

~~(1) Sanitation:~~

~~(A) Ten point maximum;~~

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

~~(C) Sanitation grade to be arrived at by averaging all sanitation scores received during last two years;~~

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

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

~~(2) Seniority:~~

~~(A) Five point maximum;~~

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

~~Years in Business Enterprises Program Points~~

~~0 to 4.99 0 points~~

~~5 to 9.99 1 point~~

~~10 to 14.99 2 points~~

~~15 to 19.99 3 points~~

~~20 to 24.99 4 points~~

~~25 and over 5 points~~

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

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

~~(A) 50 Points Maximum;~~

- 1 (B) ~~Applicants shall receive 20 points for meeting or exceeding 85 percent of their sales~~
2 ~~standard;~~
- 3 (C) ~~Applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit~~
4 ~~percentage standard;~~
- 5 (D) ~~Applicants shall receive five points for meeting or exceeding 92.5 percent of their sales~~
6 ~~optimum;~~
- 7 (E) ~~Applicants shall receive five points for meeting or exceeding 92.5 percent of their gross~~
8 ~~profit percentage optimum.~~
- 9 (4) ~~Customer and Building Management Relations:~~
- 10 (A) ~~Five points shall be deducted for each written site management complaint in the past two~~
11 ~~years, up to a maximum of 10 points.~~
- 12 (B) ~~If the applicant has more than three written site management complaints, he shall not be~~
13 ~~considered for the award. No site management complaint that is more than three years old~~
14 ~~may be used against an operator. Site management is defined as the property official for~~
15 ~~the property on which a BEP facility is located.~~
- 16 (5) ~~Oral Exam/Interview:~~
- 17 (A) ~~30 points maximum.~~
- 18 (B) ~~Interview shall be face to face (no conference calls).~~
- 19 (C) ~~All applicants shall be interviewed.~~
- 20 (D) ~~The Interview Committee shall consist of:~~
- 21 (i) ~~The Chief of Business Enterprises, or Deputy Chief or Assistant Director of~~
22 ~~Programs and Facilities as designated by Chief;~~
- 23 (ii) ~~The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the~~
24 ~~vacancy occurs, and~~
- 25 (iii) ~~The Vice Chairman of the Elected Committee of Vendors or the Chairman in his~~
26 ~~absence, or in the absence of the Chairman, the Chairman of the Transfer and~~
27 ~~Promotion subcommittee.~~
- 28 (E) ~~The Oral Exam part shall consist of 10 questions drawn either from a pool of standard~~
29 ~~questions or developed by the Interview Committee prior to the interview. The oral exam~~
30 ~~questions shall relate to any special needs of the vacant facility as well as to standard~~
31 ~~responsibilities and knowledge areas of Business Enterprises operators. Each member of~~
32 ~~the Interview Committee shall evaluate the applicant's response to each question in the oral~~
33 ~~exam. The applicant shall receive one point by demonstrating basic knowledge, the~~
34 ~~applicant shall receive one and one half points for demonstrating above average~~
35 ~~knowledge, and the applicant shall be awarded two points for demonstrating exceptional~~
36 ~~knowledge for each interview question. There shall be at least one question involving a~~

1 calculation and a talking calculator shall be provided, although applicants may bring their
2 own. The oral exam shall yield a possible 20 points.

3 (F) — The interview part shall consist of a variety of questions in a give and take format. Each
4 member of the Interview Committee shall evaluate the applicant's response to the interview
5 questions and shall award up to 10 additional points based on the applicant's previous food
6 service experience, knowledge and financial performance. If the applicant meets the
7 requirements for the facility, the applicant shall receive five additional points. If the
8 applicant's qualifications exceed the requirements of the facility, he may be awarded up to
9 ten additional points. The interview shall include the following elements: questions related
10 to business philosophy to promote general discussion to enable the interview panel to
11 evaluate the applicant's expertise, maturity, experience and ability; a discussion of any
12 related work experience outside the Business Enterprises Program; at least two business
13 math questions. Since points are awarded for seniority, time in the Business Enterprises
14 Program shall not be considered as a reason to award points; however, relevant work
15 experience in the Business Enterprises Program may be discussed and taken into
16 consideration. Applicants may bring letters of recommendation, certificates, and other
17 documents that would aid the Interview Committee in awarding its discretionary points.

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

21 (6) — Licensees and trainees:

22 (A) — A licensee who has no previous experience in the North Carolina Business Enterprises
23 Program shall be assigned 35 points in the Financial Analysis/Operating Standards
24 category. If the licensee scores 90 percent or above on the National Restaurant
25 Association's ServSafe exam, he/she shall be awarded three points in the sanitation
26 category.

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

32 (C) — Applicants shall have satisfactorily completed Level I training or have a Level I license to
33 be interviewed. The four levels of Business Enterprises facilities are defined as follows:
34 Level I has no cooking or on-site food preparation and includes only service via vending
35 machines or over the counter service including snacks, candy, pre packaged sandwiches,
36 coffee, and assorted beverages. Level II service is similar to a deli operation where hot
37 and cold food is prepared on-site. Level III service includes all of the above with the

1 ~~addition of a grill and fryer. Level IV service consists of full service cafeteria style~~
2 ~~facilities. An applicant shall score at least 60 total points to be awarded a location. If the~~
3 ~~applicant scores at least 55 points but less than 60 points, the interview panel may make a~~
4 ~~conditional award if the panel agrees it is in the best interest of the Business Enterprises~~
5 ~~Program.~~

6 (a) The Division shall send a notice of vacant facilities to all operators and licensees within the last 10 business days
7 of the month. The notice shall provide a description of the vacancy, who to contact for more information, the address
8 where the application may be submitted, and the deadline for receipt of application. The deadline specified in the
9 notice shall be no earlier than that 10th day of the following month, or the first business day thereafter. In the event
10 of an emergency vacancy, including death or illness of an operator, the schedule for sending notices of vacant facilities,
11 conducting interviews, and awarding vacancies set forth in this Rule may be changed as determined by the Chief of
12 Business Enterprises and the chairman of the Elected Committee of Blind Vendors or his or her designee.

13 (b) An individual shall be eligible to apply for a vacancy if the individual currently possesses the license level required
14 by the vacant facility or, if the training is not currently provided by the Division or otherwise available for the license
15 level required for the vacant facility, the individual shall be eligible to apply if the applicant holds the next lower
16 license level.

17 ~~[(c) An individual shall not be eligible to apply for a vacancy if either of the following conditions exist:~~

18 ~~(1) — the individual has received written notice from the Division that the individual owes money to the~~
19 ~~Business Enterprises Program and that money is still owed, unless there is a pending grievance as~~
20 ~~set forth in Section .0400 of this Subchapter; or~~

21 ~~(2) — the individual has failed to appear for a scheduled interview twice during the preceding 12 months.~~
22 ~~In this instance, the individual will not be eligible to apply for a vacancy for 24 months from the~~
23 ~~date of the last scheduled interview. This provision shall not apply if the applicant withdrew from~~
24 ~~the interview by providing notice to the Division 48 hours prior to the scheduled appearance or if~~
25 ~~prior to the interview, the individual provides information to the Division documenting that the~~
26 ~~individual is unable to attend due to health reasons.]~~

27 (c) An individual who has received written notice from the Division that the individual owes money to the Business
28 Enterprises Program and still owes that money is only eligible to apply for a vacancy if:

29 (1) the individual has a repayment plan in place to repay the money he or she owes and is in compliance
30 with that repayment plan; or

31 (2) there is a pending grievance as set forth in Section .0400 in this Chapter.

32 (d) An individual shall not be eligible to apply for a vacancy if the individual has failed to appear for a scheduled
33 interview twice during the preceding 12 months. In this instance, the individual will not be eligible to apply for a
34 vacancy for 24 months from the date of the last scheduled interview. This provision shall not apply if the applicant
35 withdrew from the interview by providing notice to the Division 48 hours prior to the scheduled appearance or if prior
36 to the interview, the individual provides information to the Division documenting that the individual is unable to attend
37 due to health reasons.

~~(d)~~(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.

~~(e)~~(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.

~~(f)~~(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.

~~(g)~~(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 ~~(h)(1)~~, ~~(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 ~~(h)(1)~~, ~~(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.

~~(h)~~(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:

(1) applicants shall receive 20 points for meeting or exceeding 85 percent of their sales standard;

(2) applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit percentage standard;

(3) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum sales percentage;

(4) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum gross profit percentage;

- (5) applicants who are operators of a Business Enterprises military facility at the time of application shall be assigned 50 FAOS points;
- (6) applicants who are licensees at the time of application shall be assigned 40 FAOS points; and
- (7) 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.

~~(i)~~(i) 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.

~~(j)~~(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.

~~(k)~~(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.

~~(4)~~(m) The interview shall be conducted and evaluated as follows:

- (A) all applicants shall be notified in writing of the date, time, and place of their interview;
- (B) the interview shall be face-to-face. For the purposes of this Rule, a conference call shall not be considered face-to-face; and
- (C) 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.

~~(m)~~(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 ~~(h) and (j)~~ (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

1 next highest point total. In the case of an exact tie, the Division shall award the location to the applicant that has
2 worked the longest period of time as an operator in a Business Enterprises facility.

3 ~~((n))~~(o) The Division shall notify each applicant by telephone after the conclusion of interviews whether the applicant
4 was awarded the location and shall confirm the notification in writing.

5 ~~((e))~~(p) The location shall not be filled for 10 business days following the Division's providing notice to all applicants
6 pursuant to G.S. 150B-23(f) of the results of the award process, in order to allow time for administrative appeals to be
7 filed. If an appeal is filed, the location shall be filled on a conditional basis until the appeal is resolved. For the
8 purposes of this Rule, "conditional basis" means that the operator may manage the location until the appeal has been
9 resolved. If there is only one applicant for a location, the 20 business days waiting period shall not apply.

10 ~~((p))~~(q) Upon being awarded a location, the applicant shall have 20 business days to assume the responsibilities for
11 the operation of the vacant facility. The Division shall agree to a different time frame if adhering to the 20 business
12 days' timeframe would cause a hardship to the applicant awarded the facility.

13 ~~((e))~~(r) Applicants shall be reimbursed for their expenses to come to the interview at the State's per diem rates.
14 Applicants who are receiving vocational rehabilitation services shall be reimbursed through the vocational
15 rehabilitation program. The Business Enterprises Program shall only reimburse an applicant for three interviews per
16 year. After three interviews, applicants shall bear their own expenses.

17 ~~((r))~~(s) Applicants not selected may file an administrative appeal as provided for in Section .0400 of this Subchapter.
18 The time limit to file an appeal shall be 10 business days from the date that the applicant receives a notice of the results
19 of the award process that conforms to the requirements of G.S. 150B-23(f).

20
21 *History Note: Authority G.S. 111-27; G.S. 111-27.1; 143B-157; 20 U.S.C. sec. 107;*

22 *Eff. October 1, 1978;*

23 *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*

24 *February 1, 1981;*

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

27 *Amended Eff. August 1, 2020.*

1 10A NCAC 63C .0403 is amended as published in 34:17 NCR 1655 with changes as follows:

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

4 ~~(a) The operator/licensee shall discuss the problem with the Division staff person taking the action with which the~~
5 ~~operator is dissatisfied and request specific action in writing to resolve the grievance. This discussion shall be held~~
6 ~~within 15 working days of the occurrence of the action challenged by the operator. The operator/licensee shall receive~~
7 ~~a response within five working days following the discussion. Any decision made by agency personnel at this step~~
8 ~~shall be subject to supervisory review and approval.~~

9 ~~(b) If the complaint is not resolved and the operator/licensee is not satisfied with the outcome of Paragraph (a) of this~~
10 ~~Rule, he shall have 15 working days to ask for a review by the operator relations committee in writing. Within five~~
11 ~~working days after asking for a review, the operator/licensee shall be notified of the date of the hearing, which shall~~
12 ~~be held within 25 working days after the operator's/licensee's request for a hearing. The committee shall render its~~
13 ~~decision within 20 working days after the hearing.~~

14 ~~(c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator/licensee or the~~
15 ~~Division staff person responsible for the initial action, the matter may be referred by the operator/licensee or the~~
16 ~~Division staff person to the director of the Division. Any request for review shall be submitted within 15 working~~
17 ~~days after the operator relations committee has presented its recommendation. The party requesting the referral shall~~
18 ~~provide a written summary of the specific facts of the complaint and request for specific action to resolve the grievance,~~
19 ~~copies of which shall be provided at the same time to all other parties concerned. The director shall make the decision~~
20 ~~for the Division within 15 working days, and his decision shall be announced immediately to all parties concerned.~~

21 ~~(d) If the complaint is not resolved and the operator/licensee is not satisfied with steps of Paragraphs (a) through (c)~~
22 ~~of this Rule, then the operator/licensee may file a complaint with the Division requesting a full evidentiary hearing.~~

23 ~~(e) If a blind operator/licensee requests a full evidentiary hearing, such request shall be made within 15 working days~~
24 ~~after the director's adverse direction rendered through the procedures in this Rule.~~

25 ~~(f) A blind operator/licensee shall request a full evidentiary hearing in writing. This request shall be transmitted to~~
26 ~~the director of the Division personally or by certified mail, return receipt requested, transmitted through the Elected~~
27 ~~Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall be held in accordance with G.S.~~
28 ~~150B, Article 3, the extent that such article does not conflict with these Rules pertaining to grievance procedures or~~
29 ~~any federal law or regulation.~~

30 ~~(g) A blind operator/licensee shall be entitled to legal counsel or other representation in a full evidentiary hearing.~~
31 ~~The Division shall reimburse the operator for costs of legal counsel at a rate of 50% of the total amount not to exceed~~
32 ~~a total expenditure by the Division of one thousand five hundred dollars (\$1,500). This expenditure is based on the~~
33 ~~availability of funds.~~

34 ~~(h) Reader services or other communication services shall be arranged for the blind operator/licensee should he so~~
35 ~~request. Transportation costs and per diem shall be provided also to the blind operator/licensee during the pendency~~
36 ~~of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the~~
37 ~~operator/licensee.~~

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

9 ~~(j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human~~
10 ~~Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with~~
11 ~~the Division action which is at issue in the hearing or with the administration or operation of the Randolph Sheppard~~
12 ~~Business Enterprises Program.~~

13 ~~(k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient~~
14 ~~record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding~~
15 ~~officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the~~
16 ~~conduct of the hearing.~~

17 ~~(l) Both the blind operator/licensee and the Division shall be entitled to present their case by oral or documentary~~
18 ~~evidence, to submit rebuttal evidence and to conduct such examination and cross examination of witnesses as may be~~
19 ~~required for a full and true disclosure of all facts bearing on the issue.~~

20 ~~(m) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and~~
21 ~~provided to the other party. All such documents and other evidence submitted shall be open to examination by the~~
22 ~~parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.~~

23 ~~(n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay~~
24 ~~all transcript costs and shall provide the blind operator/licensee with at least one copy of the transcript.~~

25 ~~(o) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the~~
26 ~~exclusive record for decision.~~

27 ~~(p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing,~~
28 ~~and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and~~
29 ~~conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any~~
30 ~~remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working days after~~
31 ~~the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/licensee and the~~
32 ~~division.~~

33 ~~(q) If the dispute(s) is not resolved to the satisfaction of a blind operator/licensee after provision of a full evidentiary~~
34 ~~hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the convening of an~~
35 ~~arbitration panel.~~

36 ~~(r) The results of the arbitration shall be considered the final agency action and the operator/licensee shall have~~
37 ~~exhausted his administrative remedies.~~

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

5 (1) When a licensee, operator, or the ECBV wishes to request an informal review by the Operator Relations
6 Committee, the licensee, operator, or ECBV shall submit a written request to the Business Enterprises
7 Program Chief. The licensee, operator, or the ECBV shall have 20 business days after the action or inaction
8 taken by the Division that they are dissatisfied with to request an informal review.

9 (2) The written request of the licensee, operator, or ECBV shall include:

10 (A) their name, address, and preferred means of receiving written communication with the
11 Division;

12 (B) a statement that they are requesting an informal review;

13 (C) a statement explaining the actions or inactions with which they are dissatisfied; and

14 (D) a statement explaining the resolution sought by the licensee, operator, or ECBV.

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

17 (3) The licensee, operator, or the ECBV shall be notified of the date and location of the informal review at
18 least ~~[5]~~ five business days in advance of the informal review. The informal review shall be conducted within
19 25 business days of receipt of the request. The Operator Relations Committee shall issue a written decision
20 within 10 business days after the informal review is conducted and ~~[mailed]~~ mail the decision to the licensee,
21 operator, or ECBV and the Division.

22 (4) The Division shall review the decision of the Operator Relations Committee and shall notify the licensee,
23 ~~[operator]~~ operator, or ECBV in writing whether the Division affirms or overrules the decision within ~~[5]~~
24 five business days of receipt of the decision.

25 (5) A request for an informal review under this ~~[rule]~~ Rule shall have the effect of suspending the time
26 limitation for filing a petition for contested case hearing pursuant to G.S. 150B-23 and other provisions of
27 Chapter 150B, Article 3 until the later of the following:

28 (A) the licensee, operator, or the ECBV receives written notice of the Division's final decision
29 regarding the informal review; or

30 (B) the licensee, operator, or the ECBV withdraws its request for informal review

31 (b) Notwithstanding any other provision in this ~~[rule]~~ Rule, a licensee, operator, or the ECBV dissatisfied with any
32 action or inaction taken by the Division related to the Business Enterprises Program may request a full evidentiary
33 hearing by filing a petition for contested case hearing with the Office of Administrative Hearings. Such a request for
34 a full evidentiary hearing ~~[should]~~ shall be filed within the time limitation contained in G.S. 150B-23(f).

35 (1) This hearing shall be held in accordance with G.S. 150B, Article 3.

1 (2) If the dispute(s) is not resolved to the satisfaction of the licensee, operator, or the ECBV after the
2 conclusion of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of
3 Education for the convening of an arbitration panel in accordance with 34 C.F.R. § 395.13.
4

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

10A NCAC 63C .0601 is readopted as published in 34:17 NCR 1655 as follows:

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

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

- (1) ~~perform faithfully and to the best of his ability the necessary duties in connection with~~ [to] ensure
the operation of ~~the a Business Enterprises facility in accordance with the rules of the Commission~~
for the [Blind] Blind, and standards issued pursuant thereto and the contractual agreement between
the Division and the operator, and the terms and conditions of the permit or contract with the
building or property on which the host [facility,] facility including any amendments if provided to
the operator. facility is located; 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) ~~assume such responsibilities as purchasing needed supplies and merchandise, pricing,~~
~~merchandising the facility, and control of inventory;~~ purchase merchandise, price goods for [sale,]
sale as set forth in Rule .0608 of this Subchapter, purchase supplies for the [facility] facility, rotate
stock, and control inventory in the Business Enterprises facility;
- (4) ~~devote his full managerial attention to the responsibilities of operating the facility in accordance~~
~~with the agreement between him and [with] the Division and in accordance with the Rules in this~~
~~Subchapter. The operator is not required to be on site at all times; and~~
- (5) ~~maintain good [professional relationships with] customer [customers,] relations with his patrons and~~
~~with the property managing officials at his work site. [the host facility and the Division;]~~
- ~~[(6)]~~ [maintain a neat, business-like appearance while working at the Business Enterprises facility, and
shall conduct the facility in an orderly, business-like manner;]
- ~~[(7)]~~ [must assure that the business to be carried on at the facility shall be limited to that specified and
authorized in the operator agreement and permit or contract with the sponsor of the building or
property where the facility is located. host facility;]
- ~~[(8)]~~ (4) open and maintain a business bank account [in which funds are maintained to operate] for the
management of funds derived from the Business Enterprises facility;
- ~~[(9)]~~ (5) submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month
following the reporting [month;] month. Assistance shall be provided with the electronic
submission of the report by the Business Enterprises Consultant upon request from the operator;
- ~~[(40)]~~ (6) submit payment of all monthly [fees] 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;

1 [(44)] (7) keep all records supporting the monthly revenue and expense profit and loss report (D-sheet) for
2 three calendar ~~[years:]~~ years;

3 [(42)] (8) provide ~~[all]~~ records for the assigned facility to the Division upon request ~~[for the purpose of]~~
4 ~~business consultation,~~ ~~[consultation and]~~ ~~for [conducting audits and record keeping reviews;]~~
5 reviews as required by this Subchapter. That may include cash sales deposit receipts, cash register
6 tapes, monthly bank and credit card statements, invoices and receipts for purchases and expenses,
7 weekly or monthly card reader reports, and payroll records;

8 [(43)] (9) be available for all appointments with the Division staff ~~[members]~~ members, ~~[to allow inspection,~~
9 ~~advice, record]~~ ~~[reviews]~~ ~~[reviews, and consultation to support operations;]~~ which will be scheduled
10 at the convenience of both parties;

11 [(44)] (10) not subcontract management of the Business Enterprises facility except as approved in writing by
12 the ~~[Division:]~~ Division;

13 [(45)] (11) take ~~[appropriate]~~ actions to correct deficiencies noted on Business Enterprises facility audits or
14 reviews within 15 business ~~[days, and]~~ days after receiving notification of the deficiencies and a
15 description of the corrective actions to be taken, unless an extension to this time frame has been
16 agreed to by the Division and operator in writing; and

17 [(46)] (12) notify the Division of ~~[any]~~ changes to the following no later than 10 business days after the
18 change occurs:

19 (A) the facility telephone number;

20 (B) the address to which Business Enterprises correspondence ~~[shall be]~~ is delivered; and

21 (C) emergency contact ~~[information]~~ information.

22 (b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises ~~facility,~~ facility
23 and shall handle the proceeds, proceeds including payments to suppliers and deposits of funds, in accordance with
24 Division guidelines developed to facilitate the provision of management, accounting, and technical services to
25 operators, and in accordance with the U. S. Department of Education reporting requirements. as set forth in Section
26 .0700 of the Subchapter.

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

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

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

34 *History Note:* Authority *G.S. 111-27; G.S. 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*

35 *Eff. February 1, 1976;*

36 *Readopted Eff. November 16, 1977;*

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

RRC STAFF OPINION

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

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203 and .0601

RECOMMENDED ACTION:

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

COMMENT:

Following completion of the first step of the existing rules review pursuant to the G.S. 150B-21.3A, the Commission for the Blind was required to readopt 23 rules by July 31, 2018. The agency published the text of its Rules in the May 15, 2018 Register. The agency readopted the rules on July 30, 2018. The readoptions, as well as some amended rules, were filed for RRC review at its September 2018 meeting. At that meeting, the RRC approved all but Rules 10A NCAC 63C .0203, .0204, .0403, and .0601.

As reflected in the attached letter dated September 21, 2018, the RRC objected to Rules .0204 and .0403 because the text presented to the RRC differed substantially from what was published in the Register. The agency responded to the objection by stating that it accepted the objection and determined that it wanted to move forward with the changed language, rather than revert to what was originally published. In order to do so, the agency must republish the rules for a 60-day comment period pursuant to G.S. 150B-21.2.

Also at the September meeting, the RRC objected to Rule .0203 for lack of statutory authority and ambiguity. Specifically:

The Commission objected to Rule .0203, Paragraph (d)(6), because it lacks statutory authority to require an operator to provide a copy of his or her concealed weapons permit. The Commission also objected to Paragraphs (b) and (c) ("conventional means"), (d)(1) ("may be suspended or terminated"),

Amanda J. Reeder
Commission Counsel

(d)(4) (“information”), and (d)(11) and (d)(12) (“failing to cooperate”) because the indicated terms are unclear and ambiguous.

The RRC objected to Rule .0601 for ambiguity, specifically finding:

The Commission objected to Rule .0601, Paragraphs (a)(4) (“full managerial attention”), (a)(5) (“maintain professional relationships”), (a)(6) (“neat, business-like appearance” and “orderly, business-like manner”), (a)(8) (“in which are maintained to operate”), (a)(12) (“business consultation”), (a)(13) (“consultation to support operations”), and (a)(15) (“appropriate actions”), because the indicated terms are unclear and ambiguous.

The Commission for the Blind responded to the objections to Rules .0203 and .0601 by submitting rewritten rules for RRC review at its January 2019 meeting. In January, the RRC continued its objections to both Rules. The objection letter, dated January 17, 2019, stated:

The Commission continued its objection to Rule .0601, Paragraphs (a)(8) (“business consultation”), and (a)(9) (“consultation to support operations”), because the indicated terms are unclear and ambiguous.

The Commission continued its objection to Rule .0203, Paragraph (d)(6), because it effectively incorporates the ambiguous terms in Rule .0601 that are identified above.

The Commission for the Blind has responded to this objection with rewritten rules for 10A NCAC 63C .0203 and .0601. Staff believes that the two rules that are before you today rules are responsive to the Commission’s September 2018 and January 2019 objections and that these rules satisfied the objections. Specifically, the objections to the Rules that are before you today were addressed as follows:

.0203:

<u>September 2018 Objections</u>	<u>Agency Response in March 2019 Rule</u>
<u>Lack of statutory authority</u> - Paragraph (d)(6), no authority to require an operator to provide a copy of his or her concealed weapons permit.	<i>The agency removed this language from the Rule</i>
<u>Ambiguity</u> - Paragraphs (b) and (c) (“conventional means”),	<i>The agency removed this language from the Rule in both places</i>
<u>Ambiguity</u> - (d)(1) (“may be suspended or terminated”)	<i>The agency removed this language from the Rule</i>
<u>Ambiguity</u> - (d)(4) (“information”) <p><i>The language in the Rule as presented to the RRC in September 2018 stated:</i> Falsified <u>falsified</u> information pertaining to eligibility requirements;</p>	<i>The agency moved this language to (b)(2), and added clarifying language to state:</i> <p><u>“false information to the Division pertaining to eligibility requirements set forth pursuant to Rule .0202 of this Subchapter.”</u></p>
<u>Ambiguity</u> - (d)(11) and (d)(12) (“failing to cooperate”)	<i>The agency removed the language in both places</i>

January 2019 Objections	Agency Response in March 2019 Rule
Ambiguity – Paragraph (d)(6), because it effectively incorporates the ambiguous terms in Rule .0601 that are identified above.	<i>The agency addressed the ambiguous terms in Rule .0601</i>

.0601:

September 2018 Objections	Agency Response in March 2019 Rule
Ambiguity - (a)(4) (“full managerial attention”)	<i>The agency removed this language from the Rule</i>
Ambiguity - (a)(5) (“maintain professional relationships”)	<i>The agency removed this language from the Rule</i>
Ambiguity - (a)(6) (“neat, business-like appearance” and “orderly, business-like manner”)	<i>The agency removed this language from the Rule</i>
Ambiguity - (a)(8) (“in which are maintained to operate”) <i>The language in the Rule as presented to the RRC in September 2018 stated:</i> <u>open a business account in which funds are maintained to operate the Business Enterprises facility;</u>	<i>The agency removed this language from the Rule.</i> <i>The agency rewrote the sentence to state:</i> “open and maintain a business bank account for the management of funds derived from the Business Enterprises facility;”
Ambiguity - (a)(12) (“business consultation”) <i>The language in the Rule as presented to the RRC in September 2018 stated:</i> <u>provide all records for the assigned facility to the Division upon request for the purpose of business [consultation,] consultation and for conducting audits and record keeping [reviews] reviews, as required by this Subchapter;</u>	<i>The agency removed this language from the Rule.</i> <i>The agency rewrote the sentence to state:</i> <u>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, card reader weekly reports, and payroll records;</u>
Ambiguity - (a)(13) (“consultation to support operations”) <i>The language in the Rule as presented to the RRC in September 2018 stated:</i> <u>be available for all appointments with the Division staff members to allow inspection, advice, record [reviews] reviews, and consultation to support operations, at the convenience of both parties;</u>	<i>The agency removed this language from the Rule.</i> <i>The agency rewrote the sentence to state:</i> <u>be available for all appointments with the Division staff members, which will be scheduled at the convenience of both parties;</u>
Ambiguity- (a)(15) (“appropriate actions”)	<i>The agency removed this language from the Rule.</i>

January 2019 Objections	Agency Response in March 2019 Rule
<p>Ambiguity - (a)(8) (“business consultation”)</p> <p><i>The language in the Rule as presented to the RRC in January 2019 stated:</i></p> <p>provide <u>all</u> records for the assigned facility to the Division upon request for <u>the purpose of</u> business <u>consultation,</u> consultation and for conducting audits and record keeping <u>reviews,</u> reviews as required by this Subchapter; that may include vending cash sales deposit receipts, cash register tapes, monthly bank and credit card statements, invoices and receipts for purchases and expenses, card reader weekly reports, and payroll records;</p>	<p><i>The agency removed this language from the Rule.</i></p> <p><i>The agency rewrote the sentence to state:</i> Provide records for the assigned facility to the Division upon request for <u>reviews as required by this Subchapter.</u> <u>That may include cash sales deposit receipts, cash register tapes, monthly bank and credit card statements, invoices and receipts for purchases and expenses, card reader weekly reports, and payroll records;</u></p>
<p>Ambiguity - (a)(9) (“consultation to support operations”)</p> <p><i>The language in the Rule as presented to the RRC in January 2019 stated:</i></p> <p>be available for all appointments with the Division staff members to allow inspection, <u>advice,</u> record <u>reviews</u> <u>reviews,</u> and consultation to support operations, at the convenience of both parties;</p>	<p><i>The agency removed this language from the Rule.</i></p> <p><i>The agency rewrote the sentence to state:</i> be available for all appointments with the Division staff <u>members, which will be scheduled</u> at the convenience of <u>both parties;</u></p>

Also, in response to a Commission suggestion at its January 2019 meeting, the agency has inserted a citation to G.S. 111-27.1 and additional federal authority into both History Notes.

The agency believes that the changes made to these two rules following publication are “substantial changes” as defined in G.S. 150B-21.2(g). Further, the agency has promised its regulated public that it will republish these Rules prior to them becoming effective in the NC Administrative Code.

Staff is recommending approval of Rules 10A NCAC 63C .0203 and .0601 today as responsive to the objections, as well as meeting the requirements of G.S. 150B-21.9(a) for suitability of inclusion in the Code.

The anticipated timeline for Rules 10A NCAC 63C .0203, .0204, .0403, and .0601 is as follows:

1. The agency will republish all four rules in the NC Register for a 60-day comment period, using the timelines and process set forth in G.S. 150B-21.2.
2. After the close of the comment period, the Commission for the Blind will adopt these republished rules.
 - a. During the time period from today through Commission for the Blind adoption, this matter will stay on the RRC agenda as a no action follow-up matter. This process can take several months.
3. The adopted rules will be submitted to the RRC for review.
4. When Rules 63C .0203 and .0601 are submitted for RRC review, if the agency has not made substantial changes to the language that is approved today for Rules 10A NCAC 63C .0203 and .0601, staff will recommend that the RRC approve these rules for inclusion in the Code.

United States Code Annotated

Title 20. Education

Chapter 6A. Vending Facilities for Blind in Federal Buildings

20 U.S.C.A. § 107

§ 107. Operation of vending facilities

Currentness

(a) Authorization

For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this chapter shall be authorized to operate vending facilities on any Federal property.

(b) Preferences regulations; justification for limitation on operation

In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this chapter; and the Secretary, through the Commissioner, shall, after consultation with the Administrator of General Services and other heads of departments, agencies, or instrumentalities of the United States in control of the maintenance, operation, and protection of Federal property, prescribe regulations designed to assure that--

(1) the priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to [section 107d-3](#) of this title to achieve and protect such priority), and

(2) wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.

Any limitation on the placement or operation of a vending facility based on a finding that such placement or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary, who shall determine whether such limitation is justified. A determination made by the Secretary pursuant to this provision shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination, along with supporting documentation, in the Federal Register.

CREDIT(S)

§ 107. Operation of vending facilities, 20 USCA § 107

(June 20, 1936, c. 638, § 1, 49 Stat. 1559; Aug. 3, 1954, c. 655, § 4(a), 68 Stat. 663; [Pub. L. 93-516, Title II, § 202](#), Dec. 7, 1974, 88 Stat. 1623; [Pub. L. 93-651, Title II, § 202](#), Nov. 21, 1974, 89 Stat. 2-8.)

[Notes of Decisions \(32\)](#)

20 U.S.C.A. § 107, 20 USCA § 107

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

United States Code Annotated

Title 20. Education

Chapter 6A. Vending Facilities for Blind in Federal Buildings

20 U.S.C.A. § 107a

§ 107a. Federal and State responsibilities

Effective: August 7, 1998

[Currentness](#)

(a) Functions of Secretary; surveys; designation of State licensing agencies; qualifications for license; evaluation of programs

The Secretary of Education shall--

(1) Insure that the Rehabilitation Services Administration is the principal agency for carrying out this chapter; and the Commissioner shall, within one hundred and eighty days after enactment of the Randolph-Sheppard Act Amendments of 1974, establish requirements for the uniform application of this chapter by each State agency designated under paragraph (5) of this subsection, including appropriate accounting procedures, policies on the selection and establishment of new vending facilities, distribution of income to blind vendors, and the use and control of set-aside funds under [section 107b\(3\)](#) of this title;

(2) Through the Commissioner, make annual surveys of concession vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service;

(3) Make surveys throughout the United States of industries with a view to obtaining information that will assist blind persons to obtain employment;

(4) Make available to the public, and especially to persons and organizations engaged in work for the blind, information obtained as a result of such surveys;

(5) Designate as provided in [section 107b](#) of this title the State agency for the blind in each State, or, in any State in which there is no such agency, some other public agency to issue licenses to blind persons who are citizens of the United States for the operating of vending facilities on Federal and other property in such State for the vending of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State

licensing agency, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State; and

(6) Through the Commission,¹ (A) conduct periodic evaluations of the program authorized by this chapter, including upward mobility and other training required by [section 107d-4](#) of this title, and (B) take such other steps, including the issuance of such rules and regulations, as may be necessary or desirable in carrying out the provisions of this chapter.

(b) Duty of State licensing agencies to prefer blind

The State licensing agency shall, in issuing each such license for the operation of a vending facility, give preference to blind persons who are in need of employment. Each such license shall be issued for an indefinite period but may be terminated by the State licensing agency if it is satisfied that the facility is not being operated in accordance with the rules and regulations prescribed by such licensing agency. Such licenses shall be issued only to applicants who are blind within the meaning of [section 107e](#) of this title.

(c) Selection of location and type of facility

The State licensing agency designated by the Secretary is authorized, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the Federal property on which the facility is to be located but subject to regulations prescribed pursuant to [section 107](#) of this title, to select a location for such facility and the type of facility to be provided.

(d) Buildings occupied by United States departments, agencies, and instrumentalities required to provide sites for facilities; exceptions

(1) After January 1, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, lease, or to otherwise occupy, in whole or in part, any building unless, after consultation with the head of such department, agency, or instrumentality and the State licensing agency, it is determined by the Secretary that (A) such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind person, or (B) if a building is to be constructed, substantially altered, or renovated, or in the case of a building that is already occupied on such date by such department, agency, or instrumentality, is to be substantially altered or renovated for use by such department, agency, or instrumentality, the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind person. Each such department, agency, or instrumentality shall provide notice to the appropriate State licensing agency of its plans for occupation, acquisition, renovation, or relocation of a building adequate to permit such State agency to determine whether such building includes a satisfactory site or sites for a vending facility.

(2) The provisions of paragraph (1) shall not apply (A) when the Secretary and the State licensing agency determine that the number of people using the property is or will be insufficient to support a vending facility, or (B) to any privately owned building, any part of which is leased by any department, agency, or instrumentality of the United States and in which, (i) prior to the execution of such lease, the lessor or any of his tenants had in operation a restaurant or other food facility in a part

of the building not included in such lease, and (ii) the operation of such a vending facility by a blind person would be in proximate and substantial direct competition with such restaurant or other food facility except that each such department, agency, and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.

(3) For the purposes of this subsection, the term “satisfactory site” means an area determined by the Secretary to have sufficient space, electrical and plumbing outlets, and such other facilities as the Secretary may by regulation prescribe, for the location and operation of a vending facility by a blind person.

(e) State licensing agency in States having vocational rehabilitation plans

In any State having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act or the Rehabilitation Act of 1973, the State licensing agency designated under paragraph (5) of subsection (a) of this section shall be the State agency designated under section 101(a)(2)(A) of such Rehabilitation Act of 1973 [[29 U.S.C.A. § 721\(a\)\(2\)\(A\)](#)].

CREDIT(S)

(June 20, 1936, c. 638, § 2, 49 Stat. 1559; 1939 Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 6, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 3, 1954, c. 655, § 4(b) to (d), 68 Stat. 663; [Pub.L. 93-516, Title II, § 203](#), Dec. 7, 1974, 88 Stat. 1623; [Pub.L. 93-651, Title II, § 203](#), Nov. 21, 1974, 89 Stat. 2-8; [Pub.L. 96-88, Title III, § 301\(a\)\(4\)\(B\), Title V, § 507](#), Oct. 17, 1979, 93 Stat. 678, 692; [Pub.L. 104-66, Title I, § 1041\(i\)](#), Dec. 21, 1995, 109 Stat. 715; [Pub.L. 105-220, Title IV, § 414\(a\)](#), Aug. 7, 1998, 112 Stat. 1241.)

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

<Jan. 20, 2012, [77 F.R. 3917](#)>

Federal Support for the Randolph-Sheppard Vending Facility Program

Memorandum for the Heads of Executive Departments and Agencies

Thousands of Americans who are blind have embraced the entrepreneurial spirit that helps define our Nation as a land of opportunity. Through the Federal Randolph-Sheppard Vending Facility Program administered by the Department of Education, talented and creative individuals who are blind have acquired the management training and business skills necessary to realize the American dream--a lifetime of economic opportunity, independence, and self-sufficiency for themselves and their families.

For 75 years, blind business managers have successfully operated food services and commercial ventures at Federal, State,

and private buildings and locations nationwide. We honor and celebrate this program's historic achievements. We also trust that the Randolph-Sheppard Program will continue to be a leading model for providing high-quality entrepreneurial opportunities for blind individuals. From a simple snack shop, to tourist services at the Hoover Dam, to full food-services operations at military installations, blind entrepreneurs have provided exceptional customer service to Federal and State employees, the Armed Forces, and the general public. With proven ability, they have challenged preconceived notions about disability.

The Randolph-Sheppard Act ([20 U.S.C. 107 et seq.](#)) created the Vending Facility Program requiring qualified blind individuals be given a priority to operate vending facilities on Federal properties. This program is responsible today for providing entrepreneurial opportunities for over 2,500 individuals who are blind. In turn, these business managers have hired thousands of workers, many of whom are individuals with disabilities. Every American, including persons with disabilities, deserves the opportunity to succeed without limits, earn equal pay for equal jobs, and aspire to full-time, career-oriented employment.

Continued support and cooperation are needed from executive departments, agencies, and offices (agencies) to extend the Randolph-Sheppard priority to qualified blind managers through the State licensing agencies that implement the program. Therefore, I direct all agencies that have property management responsibilities to ensure that agency officials, when pursuing the establishment and operation of vending facilities (including cafeterias and military dining facilities) as defined in [20 U.S.C. 107e](#), issue permits and contracts in compliance with the Randolph-Sheppard Program and consistent with existing regulations and law. I further direct the Secretary of Education, through the Commissioner of the Rehabilitation Services Administration, to submit a report to the President on agencies' implementation of the Randolph-Sheppard Program not later than 1 year from the date of this memorandum.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Education is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

Notes of Decisions (2)

Footnotes

¹

So in original. Probably should be "Commissioner".

20 U.S.C.A. § 107a, 20 USCA § 107a

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

United States Code Annotated

Title 20. Education

Chapter 6A. Vending Facilities for Blind in Federal Buildings

20 U.S.C.A. § 107b

§ 107b. Application for designation as State licensing agency; cooperation with Secretary; furnishing initial stock

Currentness

A State agency for the blind or other State agency desiring to be designated as the licensing agency shall, with the approval of the chief executive of the State, make application to the Secretary and agree--

(1) to cooperate with the Secretary in carrying out the purpose of this chapter;

(2) to provide for each licensed blind person such vending facility equipment, and adequate initial stock of suitable articles to be vended therefrom, as may be necessary: *Provided, however,* That such equipment and stock may be owned by the licensing agency for use of the blind, or by the blind individual to whom the license is issued: *And provided further,* That if ownership of such equipment is vested in the blind licensee, (A) the State licensing agency shall retain a first option to repurchase such equipment and (B) in the event such individual dies or for any other reason ceases to be a licensee or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency (for transfer to a successor licensee) subject to an obligation on the part of the State licensing agency to pay to such individual (or to his estate) the fair value of his interest therein as later determined in accordance with regulations of the State licensing agency and after opportunity for a fair hearing;

(3) that if any funds are set aside, or caused to be set aside, from the net proceeds of the operation of the vending facilities such funds shall be set aside, or caused to be set aside, only to the extent necessary for and may be used only for the purposes of (A) maintenance and replacement of equipment; (B) the purchase of new equipment; (C) management services; (D) assuring a fair minimum return to operators of vending facilities; and (E) retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is determined by a majority vote of blind licensees licensed by such State agency, after such agency provides to each such licensee full information on all matters relevant to such proposed program, that funds under this paragraph shall be set aside for such purposes: *Provided, however,* That in no event shall the amount of such funds to be set aside from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary;

(4) to make such reports in such form and containing such information as the Secretary may from time to time require and to comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) to issue such regulations, consistent with the provisions of this chapter, as may be necessary for the operation of this program;

(6) to provide to any blind licensee dissatisfied with any action arising from the operation or administration of the vending facility program an opportunity for a fair hearing, and to agree to submit the grievances of any blind licensee not otherwise resolved by such hearing to arbitration as provided in [section 107d-1](#) of this title.

CREDIT(S)

(June 20, 1936, c. 638, § 3, 49 Stat. 1560; 1946 Reorg. Plan No. 2, § 6, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 3, 1954, c. 655, § 4(e), 68 Stat. 664; [Pub. L. 93-516, Title II, § 204](#), Dec. 7, 1974, 88 Stat. 1625; [Pub. L. 93-651, Title II, § 204](#), Nov. 21, 1974, 89 Stat. 2-10.)

[Notes of Decisions \(7\)](#)

20 U.S.C.A. § 107b, 20 USCA § 107b

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107b-1

§ 107b-1. Access to information with State licensing agencies; election and responsibilities of Committee of Blind Vendors

In addition to other requirements imposed in this title and in this chapter upon State licensing agencies, such agencies shall--

- (1) provide to each blind licensee access to all relevant financial data, including quarterly and annual financial reports, on the operation of the State vending facility program;
- (2) conduct the biennial election of a Committee of Blind Vendors who shall be fully representative of all blind licensees in the State program,¹ and
- (3) insure that such committee's responsibilities include (A) participation, with the State agency, in major administrative decisions and policy and program development, (B) receiving grievances of blind licensees and serving as advocates for such licensees, (C) participation, with the State agency, in the development and administration of a transfer and promotion system for blind licensees, (D) participation, with the State agency, in developing training and retraining programs, and (E) sponsorship, with the assistance of the State agency, of meetings and instructional conferences for blind licensees.

CREDIT(S)

(Pub. L. 93-516, Title II, § 209, Dec. 7, 1974, 88 Stat. 1630; Pub. L. 93-651, Title II, § 209, Nov. 21, 1974, 89 Stat. 2-15.)

[Notes of Decisions \(2\)](#)

Footnotes

¹

So in original. The comma probably should be a semicolon.

20 U.S.C.A. § 107b-1, 20 USCA § 107b-1

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document



KeyCite Red Flag - Severe Negative Treatment

KeyCite Red Flag Negative Treatment§ 107b-2. Omitted

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107b-2

§ 107b-2. Omitted

[Currentness](#)

20 U.S.C.A. § 107b-2, 20 USCA § 107b-2

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

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[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107b-3

§ 107b-3. Audit of nonappropriated fund activities

[Currentness](#)

The Comptroller General is authorized to conduct regular and periodic audits of all nonappropriated fund activities which receive income from vending machines on Federal property, under such rules and regulations as he may prescribe. In the conduct of such audits he and his duly authorized representatives shall have access to any relevant books, documents, papers, accounts, and records of such activities as he deems necessary.

CREDIT(S)

([Pub. L. 93-516, Title II, § 211](#), Dec. 7, 1974, 88 Stat. 1630; [Pub. L. 93-651, Title II, § 211](#), Nov. 21, 1974, 89 Stat. 2-15.)

20 U.S.C.A. § 107b-3, 20 USCA § 107b-3

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document



KeyCite Red Flag - Severe Negative Treatment

KeyCite Red Flag Negative Treatment§ 107c. Repealed. Pub.L. 93-516, Title II, § 205, Dec. 7, 1974, 88 Stat. 1626

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107c

§ 107c. Repealed. Pub.L. 93-516, Title II, § 205, Dec. 7, 1974, 88 Stat. 1626

[Currentness](#)

20 U.S.C.A. § 107c, 20 USCA § 107c
Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

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[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107d

§ 107d. Expenditures

[Currentness](#)

(a) Personal services, rent, printing, etc.

The Secretary is authorized to make such expenditures out of any money appropriated therefor (including expenditures for personal services and rent at the seat of government and elsewhere, books of reference and periodicals, for printing and binding, and for traveling expenses) as he may deem necessary to carry out the provisions of this chapter.

(b) Preference to blind persons in employment

The Secretary shall, in employing such additional personnel as may be necessary, give preference to blind persons who are capable of discharging the required duties.

CREDIT(S)

(June 20, 1936, c. 638, § 4, formerly § 5, 49 Stat. 1560; 1946 Reorg. Plan No. 2, § 6, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered § 4 and amended [Pub. L. 93-516, Title II, §§ 206](#), 208(d), Dec. 7, 1974, 88 Stat. 1626, 1629; [Pub. L. 93-651, Title II, §§ 206](#), 208(d), Nov. 21, 1974, 89 Stat. 2-11, 2-14.)

[Notes of Decisions \(1\)](#)

20 U.S.C.A. § 107d, 20 USCA § 107d

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107d-1

§ 107d-1. Grievances of blind licensees

(a) Hearing and arbitration

Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to a State licensing agency a request for a full evidentiary hearing, which shall be provided by such agency in accordance with [section 107b\(6\)](#) of this title. If such blind licensee is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to [section 107d-2](#) of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

(b) Noncompliance by Federal departments and agencies; complaints by State licensing agencies; arbitration

Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States that has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of this chapter or any regulations issued thereunder (including a limitation on the placement or operation of a vending facility as described in [section 107\(b\)](#) of this title and the Secretary's determination thereon) such licensing agency may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to [section 107d-2](#) of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

CREDIT(S)

(June 20, 1936, c. 638, § 5, as added [Pub. L. 93-516, Title II, § 206](#), Dec. 7, 1974, 88 Stat. 1626; [Pub. L. 93-651, Title II, § 206](#), Nov. 21, 1974, 89 Stat. 2-11.)

[Notes of Decisions \(24\)](#)

20 U.S.C.A. § 107d-1, 20 USCA § 107d-1

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107d-2

§ 107d-2. Arbitration

[Currentness](#)

(a) Notice and hearing

Upon receipt of a complaint filed under [section 107d-1](#) of this title, the Secretary shall convene an ad hoc arbitration panel as provided in subsection (b). Such panel shall, in accordance with the provisions of subchapter II of chapter 5 of Title 5, give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as a final agency action for purposes of chapter 7 of such Title 5.

(b) Composition of panel; designation of chairman; termination of violations

(1) The arbitration panel convened by the Secretary to hear grievances of blind licensees shall be composed of three members appointed as follows:

(A) one individual designated by the State licensing agency;

(B) one individual designated by the blind licensee; and

(C) one individual, not employed by the State licensing agency or, where appropriate, its parent agency, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (1)(A), (B), or (C), the Secretary shall designate such member on behalf of such party.

(2) The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(A) one individual, designated by the State licensing agency;

(B) one individual, designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(C) one individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (2)(A), (B), or (C), the Secretary shall designate such member on behalf of such party. If the panel appointed pursuant to paragraph (2) finds that the acts or practices of any such department, agency, or instrumentality are in violation of this chapter, or any regulation issued thereunder, the head of any such department, agency, or instrumentality shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(c) Publication of decisions in Federal Register

The decisions of a panel convened by the Secretary pursuant to this section shall be matters of public record and shall be published in the Federal Register.

(d) Payment of costs by the Secretary

The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses he shall publish in the Federal Register.

CREDIT(S)

(June 20, 1936, c. 638, § 6, as added [Pub. L. 93-516, Title II, § 206](#), Dec. 7, 1974, 88 Stat. 1626; [Pub. L. 93-651, Title II, § 206](#), Nov. 21, 1974, 89 Stat. 2-11.)

[Notes of Decisions \(32\)](#)

20 U.S.C.A. § 107d-2, 20 USCA § 107d-2

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

United States Code Annotated

Title 20. Education

Chapter 6A. Vending Facilities for Blind in Federal Buildings

20 U.S.C.A. § 107d-3

§ 107d-3. Vending machine income

(a) Accrual to blind licensee and alternatively to State agency; ceiling on amount for individual licensee

In accordance with the provisions of subsection (b) of this section, vending machine income obtained from the operation of vending machines on Federal property shall accrue (1) to the blind licensee operating a vending facility on such property, or (2) in the event there is no blind licensee operating such facility on such property, to the State agency in whose State the Federal property is located, for the uses designated in subsection (c) of this section, except that with respect to income which accrues under clause (1) of this subsection, the Commissioner may prescribe regulations imposing a ceiling on income from such vending machines for an individual blind licensee. In the event such a ceiling is imposed, no blind licensee shall receive less vending machine income under such ceiling than he was receiving on January 1, 1974. No limitation shall be imposed on income from vending machines, combined to create a vending facility, which are maintained, serviced, or operated by a blind licensee. Any amounts received by a blind licensee that are in excess of the amount permitted to accrue to him under any ceiling imposed by the Commissioner shall be disbursed to the appropriate State agency under clause (2) of this subsection and shall be used by such agency in accordance with subsection (c) of this section.

(b) Direct competition between vending machine and vending facility; proportion of accrued income from such vending machines for individual licensee

(1) After January 1, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section. "Direct competition" as used in this section means the existence of any vending machines or facilities operated on the same premises as a blind vending facility except that vending machines or facilities operated in areas serving employees the majority of whom normally do not have direct access to the blind vending facility shall not be considered in direct competition with the blind vending facility. After January 1, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section, except that with respect to Federal property at which at least 50 per centum of the total hours worked on the premises occurs during periods other than normal working hours, 30 per centum of such income shall so accrue.

(2) The head of each department, agency, and instrumentality of the United States shall insure compliance with this section with respect to buildings, installations, and facilities under his control, and shall be responsible for collection of, and accounting for, such vending machine income.

(c) Disposal of accrued vending machine income by State licensing agency

All vending machine income which accrues to a State licensing agency pursuant to subsection (a) of this section shall be used to establish retirement or pension plans, for health insurance contributions, and for provision of paid sick leave and vacation time for blind licensees in such State, subject to a vote of blind licensees as provided under [section 107b\(3\)\(E\)](#) of this title. Any vending machine income remaining after application of the first sentence of this subsection shall be used for the purposes specified in [sections 107b\(3\)\(A\), \(B\), \(C\), and \(D\)](#) of this title, and any assessment charged to blind licensees by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

(d) Income from vending machines in certain locations excepted

Subsections (a) and (b) (1) of this section shall not apply to income from vending machines within retail sales outlets under the control of exchange or ships' stores systems authorized by Title 10, or to income from vending machines operated by the Veterans Canteen Service, or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

(e) Regulations establishing priority for operation of cafeterias

The Secretary, through the Commissioner, shall prescribe regulations to establish a priority for the operation of cafeterias on Federal property by blind licensees when he determines, on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise.

(f) Existing arrangements more favorable to blind licensees unaffected

This section shall not operate to preclude preexisting or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind licensees (1) receive a greater percentage or amount of vending machine income than that specified in subsection (b)(1) of this section, or (2) receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

(g) Regulations for compliance

The Secretary shall take such action and promulgate such regulations as he deems necessary to assure compliance with this section.

CREDIT(S)

(June 20, 1936, c. 638, § 7, as added [Pub. L. 93-516, Title II, § 206](#), Dec. 7, 1974, 88 Stat. 1627; [Pub. L. 93-651, Title II, § 206](#), Nov. 21, 1974, 89 Stat. 2-12.)

[Notes of Decisions \(7\)](#)

20 U.S.C.A. § 107d-3, 20 USCA § 107d-3

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107d-4

§ 107d-4. Training programs for maximum vocational potential for blind

[Currentness](#)

The Commissioner shall insure, through promulgation of appropriate regulations, that uniform and effective training programs, including on-the-job training, are provided for blind individuals, through services under the Rehabilitation Act of 1973. He shall further insure that State agencies provide programs for upward mobility (including further education and additional training or retraining for improved work opportunities) for all trainees under this chapter, and that follow-along services are provided to such trainees to assure that their maximum vocational potential is achieved.

CREDIT(S)

(June 20, 1936, c. 638, § 8, as added [Pub.L. 93-516, Title II, § 206](#), Dec. 7, 1974, 88 Stat. 1628; [Pub.L. 93-651, Title II, § 206](#), Nov. 21, 1974, 89 Stat. 2-13.)

20 U.S.C.A. § 107d-4, 20 USCA § 107d-4

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

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United States Code Annotated

Title 20. Education

Chapter 6A. Vending Facilities for Blind in Federal Buildings

20 U.S.C.A. § 107e

§ 107e. Definitions

Currentness

As used in this chapter--

- (1) “blind person” means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select;
- (2) “Commissioner” means the Commissioner of the Rehabilitation Services Administration;
- (3) “Federal property” means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States;
- (4) “Secretary” means the Secretary of Education;
- (5) “State” means a State, territory, possession, Puerto Rico, or the District of Columbia;
- (6) “United States” includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia;
- (7) “vending facility” means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of the articles or services described in [section 107a\(a\)\(5\)](#) of this title and which may be operated by blind licensees; and

(8) “vending machine income” means receipts (other than those of a blind licensee) from vending machine operations on Federal property, after cost of goods sold (including reasonable service and maintenance costs), where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind licensee) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

CREDIT(S)

(June 20, 1936, c. 638, § 9, formerly § 6, 49 Stat. 1560; Aug. 3, 1954, c. 655, § 4(f), 68 Stat. 664; renumbered § 9 and amended [Pub.L. 93-516, Title II, §§ 206](#), 207, Dec. 7, 1974, 88 Stat. 1626, 1628; [Pub.L. 93-651, Title II, §§ 206](#), 207, Nov. 21, 1974, 89 Stat. 2-11, 2-13; [Pub.L. 96-88, Title III, § 301\(a\)\(4\)\(B\), Title V, § 507](#), Oct. 17, 1979, 93 Stat. 678, 692.)

Notes of Decisions (1)

20 U.S.C.A. § 107e, 20 USCA § 107e

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

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KeyCite Red Flag - Severe Negative Treatment

KeyCite Red Flag Negative Treatment§ 107e-1. Repealed. Pub.L. 93-516, Title II, § 205, Dec. 7, 1974, 88 Stat. 1626

[United States Code Annotated](#)

[Title 20. Education](#)

[Chapter 6A. Vending Facilities for Blind in Federal Buildings](#)

20 U.S.C.A. § 107e-1

§ 107e-1. Repealed. Pub.L. 93-516, Title II, § 205, Dec. 7, 1974, 88 Stat. 1626

[Currentness](#)

20 U.S.C.A. § 107e-1, 20 USCA § 107e-1
Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

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20 U.S.C.A. § 107f

§ 107f. Authorization of appropriations

[Currentness](#)

There is authorized to be appropriated such sums as may be necessary for carrying out the provisions of this chapter.

CREDIT(S)

(June 20, 1936, c. 638, § 10, formerly § 7, 49 Stat. 1560; renumbered § 8, Aug. 3, 1954, c. 655, § 4(g), 68 Stat. 664; renumbered § 10, [Pub. L. 93-516, Title II, § 206](#), Dec. 7, 1974, 88 Stat. 1626; [Pub. L. 93-651, Title II, § 206](#), Nov. 21, 1974, 89 Stat. 2-11.)

20 U.S.C.A. § 107f, 20 USCA § 107f

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

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[Subpart B. The State Licensing Agency](#)

34 C.F.R. § 395.2

§ 395.2 Application for designation as a State licensing agency; general.

[Currentness](#)

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under part 1361 of this chapter.

(b) Such application shall be:

- (1) Submitted in writing to the Secretary;
- (2) Approved by the chief executive of the State; and
- (3) Transmitted over the signature of the administrator of the State agency making application.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.3

§ 395.3 Application for designation as State licensing agency; content.

Currentness

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning

a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nominee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements:

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under § 395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.4

§ 395.4 State rules and regulations.

Currentness

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

(1) The State licensing agency; or

(2) Its nominee, subject to the conditions specified in § 395.15(b); or

(3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

(1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and

(2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(4\)](#)

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.5

§ 395.5 Approval of application for designation as State licensing agency.

[Currentness](#)

When the Secretary determines that an application submitted by a State vocational rehabilitation agency under [§ 395.2](#), and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.6

§ 395.6 Vendor ownership of vending facilities.

Currentness

(a) If a State licensing agency determines under § 395.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency's regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock;

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner's failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement;

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agrees to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing;

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein; and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor's ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a

complaint with the Secretary under [§ 395.13](#) to request the convening of an ad hoc arbitration panel.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(9\)](#)

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.7

§ 395.7 The issuance and conditions of licenses.

[Currentness](#)

(a) The State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

(1) Blind;

(2) Citizens of the United States; and

(3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(13\)](#)

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.8

§ 395.8 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under § 395.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

Notes of Decisions (3)

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.9

§ 395.9 The setting aside of funds by the State licensing agency.

Currentness

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under § 395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably

§ 395.9 The setting aside of funds by the State licensing agency., 34 C.F.R. § 395.9

required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(3\)](#)

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.10

§ 395.10 The maintenance and replacement of vending facility equipment.

[Currentness](#)

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

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34 C.F.R. § 395.11

§ 395.11 Training program for blind individuals.

[Currentness](#)

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 ([Pub.L. 93–112](#)), as amended by the Rehabilitation Act Amendments of 1974 ([Pub.L. 93–516](#)). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State’s vending facility program.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(1\)](#)

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34 C.F.R. § 395.12

§ 395.12 Access to program and financial information.

[Currentness](#)

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.13

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

Currentness

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the Federal Register.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the Federal Register.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(13\)](#)

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34 C.F.R. § 395.14

§ 395.14 The State Committee of Blind Vendors.

[Currentness](#)

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State 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 State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(4\)](#)

Current through March 7, 2019; 84 FR 8277.

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34 C.F.R. § 395.15

§ 395.15 Use of nominee agreements.

Currentness

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

- (1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;
- (2) Specify the type and extent of the services to be provided under such agreement;
- (3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;
- (4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and
- (5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

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34 C.F.R. § 395.16

§ 395.16 Permit for the establishment of vending facilities.

[Currentness](#)

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

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34 C.F.R. § 395.17

§ 395.17 Suspension of designation as State licensing agency.

Currentness

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to

place funds in escrow under paragraph (c) of this section, in which event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; [20 U.S.C. 107a](#).

[Notes of Decisions \(1\)](#)

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