



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

September 21, 2018

Kathie Trotter, Rulemaking Coordinator
Commission for the Blind
Sent via email only: Kathie.trotter@dhhs.nc.gov

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

Dear Ms. Trotter:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

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

The Commission objected to Rule .0204 because the rule as submitted for review by the Commission differs substantially from the rule proposed in the North Carolina Register, in violation of G.S. 150B-21.2(g). The Commission also objected to Rule .0204, Paragraphs (c) (criteria for evaluating "adjustments") and (d)(7) (tie breaking procedures), because the indicated terms or procedures are unclear and ambiguous.

The Commission objected to Rule .0403 because the rule as submitted for review by the Commission differs substantially from the rule proposed in the North Carolina Register, in violation of G.S. 150B-21.2(g).

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)

Administration
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An Equal Employment Opportunity Employer

(“business consultation”), (a)(13) (“consultation to support operations”), and (a)(15) (“appropriate actions”), because the indicated terms are unclear and ambiguous.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s action, please let me know.

Sincerely,

/s/ Jason Thomas
Commission Counsel

Cc: Cynthia Speight (cynthia.speight@dhhs.nc.gov)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203

DEADLINE FOR RECEIPT: Friday, September 14, 2018

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

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

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

Line 5 – delete the comma

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

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

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

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

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

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

Line 27 – add “of” before “felony”

Line 29 – add “commits” before “willful”

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

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

Line 35 – replace “partaking” with “partakes”

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

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

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

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

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

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

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

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

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

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

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

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

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

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 being~~
7 ~~operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or~~
8 ~~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 shall be terminated if the licensee's vision is improved by conventional means to the~~
14 ~~point at which the licensee is not legally blind.~~

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

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

18 ~~(1) — Vision improves so that the operator is no longer eligible for licensing;~~

19 ~~(2)(1) Extended illness~~ extended illness, defined as lasting at least three months, occurs with medically
20 documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises
21 facility in a manner consistent with the needs of the location or other available locations in the
22 Business Enterprises Program;

23 ~~(3)(2) Withdrawal~~ withdrawal of the operator from the program upon his written notification to the
24 Division;

25 ~~(4) — Gross misconduct or conduct so reprehensible as to bring discredit to the program;~~

26 ~~(5)(3) Conviction~~ conviction of a felony (Class A through E); misdemeanor involving crimes of dishonesty
27 or any felony;

28 ~~(6)(4) Falsified~~ falsified information pertaining to eligibility requirements;

29 ~~(7)(5) Willful~~ willful acts that would endanger the lives and property of others;

30 ~~(8)(6) Possession of firearms or lethal weapons on the job; site at a Business Enterprises facility~~ unless
31 otherwise allowed by law. Operators and licensees who choose to carry concealed weapons as
32 allowed by law on site at a Business Enterprises facility shall provide the Division with a copy of
33 their concealed weapons permit;

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;

- (8) failing to personally operate the awarded facility as set forth in the operator agreement and permit or contract with the host facility unless prior written approval to operate the facility in another manner has been obtained from the Division;
- (9) failing to pay fees to the Controller's Office by the 15th day of the month following the month in which the business was transacted three times during the calendar year;
- (10) failing to preserve required financial and other records with the Division as required by this Subchapter;
- (11) failing to cooperate with record keeping reviews conducted by the Division as required by this Subchapter;
- (12) failing to cooperate with audits conducted by state or federal agencies as required by this Subchapter;
- (13) failing to maintain bonding, liability and workers compensation insurance coverage as required by law or policy;
- (14) using Business Enterprises equipment and or facility to operate another business;
- (15) failing to maintain facility equipment in a sanitary and operable condition within the scope of the operator's level of maintenance authorization;
- (16) removing facility equipment without written authorization from the Division;
- (17) failing to comply with federal or state law prohibiting discrimination in hiring and service to customers; and
- (18) failing to comply with the operator's responsibilities in this Subchapter or the operator's agreement.
- (d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the seriousness of the situation, but shall not exceed a maximum of 60 days.

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

RRC STAFF OPINION

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

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0204

RECOMMENDED ACTION:

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

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

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

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

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

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

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

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

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

Jason Thomas
Commission Counsel
Issued June 7, 2018

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

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

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

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

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

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

* * * * *

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0204

DEADLINE FOR RECEIPT: Friday, September 14, 2018

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

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

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

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

Line 7 – add a comma after "information"

Line 9 – replace "must" with "shall"

Line 17 – what does "BEP" refer to?

Line 21 – add a comma after "seniority"

Line 21 – delete "and"

Line 21 – add a comma after "analysis"

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

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

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

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

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

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

Jason Thomas
Commission Counsel

Date submitted to agency: Tuesday, September 4, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 6, line 33 – capitalize “Rule”

Page 6, line 36 – delete “and so on”

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

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

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

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

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

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

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

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

Page 7, line 12 – delete the comma

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

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

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

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

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

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

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

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

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

Page 7, line 24 – delete “at least”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program shall be awarded the location.
- (6) Applicants shall be notified as soon as possible after their interview whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.
- (7) Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division shall agree to a different time frame if adhering to the 30 day time frame would cause a hardship to the applicant awarded the facility. The location shall not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal is resolved. If there is only one applicant for a location, the 15 day waiting period shall not apply.
- (8) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, and the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect, the applicant shall repeat the necessary on the job training. The Interview Committee may also recommend refresher course training to assure qualified management.
- (9) Licensees/operators not selected may file an administrative appeal as provided for in Subchapter 63C Section .0400. The fifteen day limit to file an appeal shall begin from the date the licensee/operator is informed by telephone of the results of the award.
- (10) An applicant must have operated a Business Enterprises location for six months prior to the cut off date for calculating financial performance according to standards to be considered an operator; otherwise, the operator shall be in licensee status. The cut off date is defined as the 12 month period ending with the last day of the same month in which the vacancy is advertised.
- (11) If an operator leaves the Business Enterprises Program and then applies for a location within 12 months of leaving, his financial performance according to standards for the 12 months prior to his leaving shall be used to calculate points in the Financial Performance Section.
- (12) Financial analyses of facilities shall be done every two years. The analysis shall be on the facility not the operator; however, an operator may request a new analysis after at least four months in the new facility. If an applicant's financial analysis is less than two years old and the applicant's performance is neither above 100 percent nor below 85 percent on either measure, the financial analysis is current.
- (13) An applicant who does not hold the required level of license for the vacancy may be awarded the facility contingent upon successfully completing the required training. Applicants who hold the required level of license but have not operated a facility at that level for at least two years shall

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

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

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

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

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

(1) Sanitation:

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

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

(C) Sanitation grade ~~to be arrived at by averaging~~ shall be the average of all sanitation scores received during the last previous 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 points 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 business 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 according to Financial financial Analysis analysis/and Operating operating Standards 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.~~ require Each 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;

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

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

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

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

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

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

(4) Customer and Building Management Relations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *Eff. October 1, 1978;*

2 *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*
3 *February 1, 1981;*

4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
5 *23, ~~2015~~, 2015;*

6 *Amended Eff.*_____.

RRC STAFF OPINION

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

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0403

RECOMMENDED ACTION:

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

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

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

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

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

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

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

* * * * *

Jason Thomas
Commission Counsel
Issued June 7, 2018

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0403

DEADLINE FOR RECEIPT: Friday, September 14, 2018

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

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

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

Line 12 – replace “when” with “if”

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

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

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

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

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

Page 3, line 9 – delete the comma

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

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

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

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

Page 4, line 27 – capitalize “State”

Page 4, line 28 – delete the comma

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (m) ~~All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and~~
2 ~~provided to the other party. All such documents and other evidence submitted shall be open to examination by the~~
3 ~~parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues. The blind~~
4 ~~operator or licensee or the ECBV and the Division shall be entitled to present their case by oral or documentary~~
5 ~~evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be~~
6 ~~required for a full and true disclosure of all facts bearing on the issue.~~

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

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

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

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

32 (r) ~~The results of the arbitration shall be considered the final agency action and the operator/ licensee operator or~~
33 ~~licensee or the ECBV shall have exhausted his administrative remedies. If the dispute(s) is not resolved to the~~
34 ~~satisfaction of a blind operator or licensee or the ECBV after provision of a full evidentiary hearing, an appeal may~~
35 ~~be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.~~

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0601

DEADLINE FOR RECEIPT: Friday, September 14, 2018

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

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

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

Line 6 – replace “The” with “A”

Line 7 – delete “perform to”

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

Line 9 – add a comma after “Blind”

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

Line 12 – do not capitalize “Rules”

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

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

Line 21 – delete the comma after “facility”

Line 22 – delete “shall”

Line 23 – delete “must”

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

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

Line 33 – add a comma after “years”

Line 35 – delete the comma after “consultation”

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

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

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

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

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

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

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

Page 2, line 10 – delete the comma

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

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

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

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

2
3 **SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS**
4

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

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

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

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

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

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

7 (A) facility telephone number;

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

9 (C) emergency contact information

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

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

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

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

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

22 Eff. February 1, 1976;

23 Readopted Eff. November 16, 1977;

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

25 Readopted Eff. _____.