

NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**  
Division of Services for the Blind

ROY COOPER • Governor  
MANDY COHEN, MD, MPH • Secretary  
TARA MYERS, MS, CRC, CPM • Senior Director  
CYNTHIA SPEIGHT, MS • Division Director

**MEMORANDUM**

**TO:** Jason Thomas  
Rules Review Commission Counsel

**FROM:** Cynthia Speight

**SUBJECT:** DSB Rules RCC Staff Opinions

**DATE:** September 19, 2018

Subchapter 10A NCAC 63C Rules pertain to the NC Division of Services for the Blind (DSB) Business Enterprises Program (BEP). DSB's Commission for the Blind serves as the rule-making agency for the division. The Commission for the Blind has approved the submitted rule changes.

The U.S. Department of Education, Rehabilitation Services Administration (RSA) provides federal oversight and funding for DSB's Vocational Rehabilitation Program (VR). The Business Enterprises Program is one of many vocational programs afforded to legally blind citizens who reside in North Carolina. The Division of Services for the Blind chose to have a Business Enterprises Program and serves as the State Licensing Agent (SLA) for the program. As the SLA, DSB has full responsibility for the supervision and management of each BEP facility in accordance with its established rules and regulations and the terms and conditions governing the SLA (34 C.F.R. 395.3). DSB utilizes VR federal grant funds to support the Business Enterprises Program. The Business Enterprises Program is supported with 78.7% VR federal grant funds.

The Business Enterprises Elected Committee of Blind Vendors (ECBV) has the authority under 34 C.F.R 395.14 to actively participate with the SLA in major administrative decisions, rule-making, and policy and program development decisions affecting the overall administration of the Business Enterprises Program. Rule changes must be submitted to the Secretary of the Rehabilitation Services Administration for approval. The ECBV is aware of this requirement and that revisions to the rules may be necessary after comment from the Secretary or his or her designee. There is no requirement that the SLA and the ECBV reach a consensus regarding rule changes. The following will document that the ECBV have in fact been continuously engaged in the rule review and readoption process and we believe that efforts have been made to address their concerns.

The published changes for 10A NCAC 63C .0204 were shared with the ECBV for review and input on the following dates: February 1, 2018; February 12, 2018; February 14, 2018; February

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF SERVICES FOR THE BLIND

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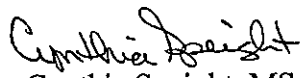
AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

28, 2018; March 1, 2018; March 7, 2018; March 8, 2018, March 16, 2018; March 18, 2018; and March 26, 2018. The published changes for 10A NCAC 63C .0403 were shared with the ECBV for review and input on the following dates: February 12, 2018; February 28, 2018; March 7, 2018; March 8, 2018; and March 16, 2018.

We agree that 10A NCAC 63C .0204 and 10A NCAC 63C .0403 differ from the published proposed rule. However, the ECBV, who is among the regulated public body effected by these rules, reasonably expected the changes. 10A NCAC 63C .0204 and 10A NCAC 63C .0403 each received public comments from the regulated body or those advocating on their behalf. The revisions requested through the public comment period together with the guidance provided by RSA account for the revisions in the rules between the published changes and before the Rules Review Commission. As the regulated body had a reasonable expectation that these revisions to the rules would occur, the revisions do not amount to a substantial change.

Thank you in advance for your review and consideration of these comments in response to the RRC staff opinions.

Respectfully Yours,

  
Cynthia Speight, MS  
Director

*History Note:* Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107;  
 Eff. October 1, 1978;  
 Amended Eff. August 1, 2002; May 1, 1996; February 1, ~~1984~~, 1984;  
 Readopted Eff. \_\_\_\_\_.

10A NCAC 63C .0402 is proposed for readoption with substantive changes as follows:

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

- (a) Every operator<sup>r</sup> or licensee or the ECBV has the right to present a problem for appeal free from interference, restraint, coercion, discrimination, or reprisal. This ~~policy rule~~ shall be covered fully during orientation procedures for new ~~operators~~ operators or licensee licensees.
- (b) When presenting an appeal, an operator<sup>r</sup> or licensee or the ECBV may be accompanied by a person or persons of his or her choice.
- (c) The filing of a complaint with the Division shall indicate consent by the blind operator<sup>r</sup> or licensee or the ECBV for the release of such information as is necessary for the conduct of the administrative appeal.

*History Note:* Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec 107;  
 Eff. October 1, 1978;  
 Amended Eff. February 1, 1984, February 1, 1981;  
 Recodified Paragraph (f) to Rule .0212 Eff. May 30, 1984;  
 Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, ~~1986~~, 1986;  
 Readopted Eff. \_\_\_\_\_.

10A NCAC 63C .0403 is proposed for readoption with substantive changes as follows:

#### **10A NCAC 63C .0403 PROCEDURE**

- (a) The operator<sup>r</sup> or licensee or the ECBV shall submit the grievance in writing to the Division and discuss the problem with the Division staff person taking the action with which the operator or licensee or the ECBV is dissatisfied and request specific action in writing to resolve the grievance. This The written grievance and requested resolution shall be submitted to the Division and the discussion shall be held within 15 working business days of the occurrence of the action challenged by the operator or licensee or the ECBV. The operator<sup>r</sup> or licensee or the ECBV shall receive a response within five working business days following the discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval. If the grievance is not received within 15 business days of the occurrence of the action challenged, the grievance will be invalid and the Division's action final.
- (b) If the complaint is not resolved and the operator<sup>r</sup> or licensee or the ECBV is not satisfied with the outcome of Paragraph (a) of this Rule, he or she shall have 15 five working business days to ask for a review by the operator relations committee in writing. Within five working business days after asking for a review, the operator<sup>r</sup> or licensee shall be notified of the date of the hearing, which shall be held within 2510 working business days after the

**Commented [JH5]:** This section imposes additional steps than those contained in the Randolph-Sheppard Act for an individual to receive due process. While RSA believes that the parties should work to resolve their differences before the fair hearing these attempts should be voluntary, not mandated.

operator's/ ~~or~~ licensee's request for a hearing. The committee shall render its decision within 20 ~~five working~~ business days after the hearing.

(c) If the decision reached in step of Paragraph (b) of this Rule 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. Any request for review shall be submitted within 4 ~~five working~~ business days after the operator relations committee has presented its recommendation. The party requesting the referral shall provide a ~~written summary of the specific facts of the complaint~~ copy of the decision from the operators relations committee and document the request for 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 45 ~~five working~~ business days, and ~~his~~ this decision shall be announced immediately to all parties concerned.

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

(e) If a blind 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.

(f) A blind 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.

(g) A blind 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.~~

(h) Reader services or other communication services shall be arranged for the blind 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/ ~~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.

(i) The hearing 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 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/ ~~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 ~~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.

(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.

(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.

(l) ~~Both the~~ The blind 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.

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

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

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

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

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

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

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

*Eff. October 1, 1978;*

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

*December 1, 1981; 1981;*

**Commented [JH6]:** 395.13(c) also provides that an individual may appeal the decision of an arbitration panel "...such decision shall be subject to appeal and review as a final agency action for purposes of 5 U.S.C. chapter 7."

**Speight, Cynthia**

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**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:23 PM  
**To:** Speight, Cynthia  
**Subject:** FW: [External] 1st draft proposed changes to subchapter 200's  
**Attachments:** 1st draft proposed changes to subchapter 200's & 300's.docx

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-----Original Message-----

**From:** steven shores <shores.cafe@gmail.com>  
**Sent:** Thursday, February 01, 2018 5:47 PM  
**To:** Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia <cynthia.speight@dhhs.nc.gov>  
**Cc:** Chris <ccarriola@aol.com>; Ron Eller <mreller47@gmail.com>; Steven Shores <shores.cafe@gmail.com>  
**Subject:** [External] 1st draft proposed changes to subchapter 200's

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to report.spam@nc.gov.

February 1, 2018

To Whom It May Concern:

Here is the 1st rough draft of proposed changes to the sub chapter 63C NCAC sections 200's and 300's.

Two sections within the sub chapter 200's will need major work and are indicated.

Please continue to update the clean draft for comparison.

We should be able to send the 400's sometime tomorrow.  
 We are working very hard on the proposed draft.

Chris A.  
Ron E.  
Steven S.  
ECBV Rules Committee

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**(\*) LEAGALITY OF RULE OR PHRASE****(\*) EDITING**

( ) insert word(s)

[ ] remove or strike original word(s)

(\* work) editing and needs work

(\*\*\*) importance

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

The Division, through the Business Enterprises Program, shall license legally blind individuals persons who meet eligibility requirements for the Business Enterprises Program. ~~This license shall be issued for an indefinite period.~~ The licensee shall signify his acceptance of the licensing by placing their signature or mark on the agreement.~~agreement by affixing his signature or mark thereon.~~

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

**10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING OF PROSPECTIVE LICENSEES AND TRAINING**

~~(a) The Division shall interview prospective licensees as referred by the rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.~~ [HKM1]

~~(b) To be licensed:~~ (a) To be eligible to interview with the Division for training in the Business Enterprises Program, a prospective licensee shall:

- (1) have been referred by the Division of Vocational Rehabilitation Services (DVRS) (or DSB);
- ~~(1)(2)~~ The consumer must meet the definition of legally blind as outlined in 34 CFR 395.1; be legally blind as defined in 34 CFR 395.1(c) and G.S. 111-11(1);
- ~~(2)(3)~~ The consumer must be at least 18 years of age; be at least 21 years of age;
- ~~(\*) (3)(4)~~ The consumer must be physically able to perform all the duties as further detailed in this Chapter; be a citizen of the United States, residing in North Carolina (for more than one year) (a birth certificate or other documentation of citizenship must be submitted)
- (5) be physically able to perform all operator duties in this Chapter;
- ~~(4)(6)~~ All consumers must be evaluated for and demonstrate proficiency of skill in basic mobility; activities of daily living, mathematics and basic food service practices; be evaluated for and demonstrate proficiency of skill in basic mobility; activities of daily living; mathematics; computer operation in word processing, excel, internet and email; written communication; reading comprehension and basic food service practices;
- ~~(\*\*\*) ( )~~ not have a history of substance abuse for the previous 12 months;
- ~~(\*\*\*)~~ ((be able to pass a background check.))
- ~~(5)(10)~~ The consumer must be familiar with the rules and regulations for Business Enterprises facility operators. The consumer must successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility; be familiar with the rules and regulations for Business Enterprises of North Carolina facility operations.
- (6) The consumer must be a citizen of the United States; and
- ~~(keep) (7)~~ The consumer must have no previous conviction(s) of any felony class A through E.

(b) The Division shall interview a prospective licensee who meets the requirements of Part (a) above and shall make a written recommendation concerning the potential of the referral commensurate with the specific employment requirements of the Business Enterprises Program.

(\* work)(c) The prospective licensee shall successfully complete the Division's Business Enterprises Program training and must receive certification from the Division as capable of operating a Business Enterprises of North Carolina facility [as an operator apprentice.]

(\* work)(d) Blind licensees shall complete continuing education annually.

- (1) The SLA shall assist the ECBV in coordination of an annual training conference for all blind licensees and operators, as requested.
- (2) A blind licensee who is unable to attend the annual training conference shall complete continuing education by attending ECBV approved trainings.
- (3) The blind licensee shall provide proof of continuing education attendance.
- (4) Blind licensees who fail to complete continuing education requirements shall not be eligible to apply for a vacant facility or satellite opportunity.)

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

### **10A NCAC 63C .0204.0203 FILLING OF VACANCIES**

(MAJOR WORK) (EDIT ONLY FOR NOW)

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

(\*)(b) The SLA shall send a notice of available facilities to all licensees. The notice shall provide a description of the vacancy, who to contact for additional information, and deadline for receipt of application.

(\*)(b)(c) Licensees and [operator] apprentices who wish to apply for any of the locations location listed may shall forward an application to the office of the Chief of Business Enterprises as instructed in the listing

(e)(d) Transfers and promotions shall be based on the following procedures:

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

(2)(1) All applications shall be post-marked by the 10th of the month following the notice and mailed to the office of the Chief of Business Enterprises received by BEP no later than the deadline date identified in the notice. If not received in the BEP office by the deadline then the applicant shall be ineligible for the vacancy.

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

(\* work)(4)(2) ~~At least 10 working days prior to the interview, the The Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards Subparagraphs (d), (1), (2), (3) of this Rule financial analysis and operating standards and inform the applicant of his or her point total total by telephone within five business days of [application](?) deadline. The applicant shall have five working two business days to review the point total and request any adjustments.~~

(work)(3) Each applicant shall be notified in writing of the date, time and place of his or her interview.

(work)(4) The interview committee shall consist of:

(A) the Chief of the Business Enterprises Program [or his or her ]designee;

(B) an Area Rehabilitation Supervisor or BEP Representative; [and]

(C) the Vice Chair[person] of the Elected Committee of Blind Vendors or his or her designee; and

(d) the chair of the transfer and promotion committee or his or her designee.)

(\* work)(5) ~~After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, [Customer Relations] and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), [(7)] of this Rule] calculating the point total for Part [(d)](e)(1)-(4) of this Rule for each applicant, the applicant with the highest point total (if above 60 points) greater than [49](72) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest applicant (if above 60 points) point total greater than [49](72) and so on. In the case of an exact~~

- tie, the applicant with the [most] (least) time in the Business Enterprises Program shall be awarded the location.
- (work)(6) Applicants shall be notified by telephone as soon as possible after ~~their interview~~ the conclusion of interviews whether or not they have been awarded a location. This notification shall be ~~by telephone and followed up in writing.~~
- (\* work)(7) Upon being awarded a location, the applicant shall have ~~30-20~~ business days to fill the vacancy. The ~~Division~~ SLA and awarded operator shall agree to a different time frame if adhering to the ~~30-day~~ 20 business day time frame would cause ~~a hardship~~ hardship to the applicant awarded the facility. The location shall not be filled for ~~[15](five)~~ 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](five)-day~~ waiting period shall not apply.
- (\* work)(8) If an applicant is awarded a facility and has not had an Operator Agreement with the ~~Agency~~ SLA 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 his or her agreement was in effect, the applicant shall ~~repeat the necessary on-the-job training~~. ~~The~~(the) Interview Committee may ~~also~~ recommend ~~{complete~~ refresher course training to assure qualified management].
- (keep)(\*\*\*)(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.
- (\* work)(10)(9) An applicant ~~must~~ shall have operated a Business Enterprises ~~location of~~ North Carolina facility for ~~six~~ 12 consecutive months within the last ~~(?)~~ 12 months prior to the ~~cut-off date~~ for calculating financial performance according to standards month of the listing notice date to be considered an operator, otherwise, the operator applicant shall be in licensee status. This standard is not applicable to an operator of a military feeding facility. 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.
- (\*)(10) An operator maintains his or her status when absent from a Business Enterprises of North Carolina facility for less than 12 months if the operator has had a complete financial analysis and operating standards review during the ~~[24](36)-month~~ period.
- (\* work)(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. If an operator who is not currently operating a Business Enterprises of North Carolina facility applies for a vacancy within 12 months of not operating a facility then his or her financial performance (\* work) standards for the prior facility shall be used for Part (d)(3) of this Rule.
- (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. [HKM2]
- ((\*\*\*)(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)(12) An operator ~~may~~ applicant shall not sit on the Interview Committee for a location for which he/she he or she is applying or if a member of his/her immediate his or her family has applied. Family is as defined by state and federal law. 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)(13) Applicants ~~An applicant shall be reimbursed for their his or her expenses to come to the interview at the state's per diem rates. The Business Enterprises Program shall only reimburse for two travel subsistence rates for no more than three 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~~ An applicant who has an active rehabilitation case shall be reimbursed for expenses to come to the interview pursuant to rules of the rehabilitation program.

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

(1) Sanitation:

- (A) ~~Ten~~ Five point maximum;  
 (B)(C) One point for each sanitation ~~grade-rating~~ point above ninety;  
 (C)(B) Sanitation ~~grade to be arrived at by averaging shall be the average of~~ all sanitation scores received during the last two years;  
 (D) ~~Five~~ Two points shall be subtracted for any adjusted ~~B-grade-sanitation rating from 80 – 89.99~~ 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)(C) 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)(B) 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.

(\* work)(3) Performance According to ~~Financial Analysis/Operating Standards:~~ Financial Analysis and 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. Each operator is~~ shall be required to maintain 85 percent of the optimum standard established for each facility for sales and gross profit.

- (A) ~~50 point maximum;~~ 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;
- (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.~~

~~(\* work)~~(5)(4) ~~Oral Exam/Interview:~~

- ~~(A) 30 points - 40 point maximum.~~
- ~~(B) Interview shall be face to face (no conference calls). A conference call shall not be consider face to face.~~

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

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

- ~~(i) The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief,~~
- ~~(ii) The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and~~
- ~~(iii) The Vice Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.~~

~~(e)(d) The Oral Exam part shall consist of [10](10 - 20) (objective) questions (developed by the Interview Committee prior to the interview) drawn either from a pool of standard questions or developed by the Interview Committee [prior to the interview]. The oral exam questions shall relate to any include special needs of the vacant facility as well as to facility, standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam. The applicant shall receive [one point by demonstrating basic knowledge, the applicant shall receive one and one-half points for demonstrating above average knowledge, and the applicant shall be awarded two points for demonstrating exceptional knowledge for each interview question](receive points according to the question value). There shall be (2 math questions) at least one question involving a calculation(.) [and a talking calculator shall be provided, although] (Applicants)[applicants] may bring their own (calculation devices). The oral exam shall yield a possible 20 points.~~

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

- (G) ~~Each interviewer shall award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer shall be averaged and added to the applicant's points from the other Sections.~~
- ~~(\*)~~(6)(5) Licensees and trainees:
- (A) A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned 35 points in the Financial Analysis/Operating Standards category. If the licensee scores 90 percent or above on the licensee's current National Restaurant Association's ServSafe exam, exam score is 90 percent or above then he or she/he/she shall be awarded [three](five) additional points in the sanitation category.
- (B) A licensee with previous Business Enterprises experience shall be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records shall be considered, if available; or the applicant may take the National Restaurant Association's ServSafe exam. If the licensee scores 90 percent or above on the ServSafe exam, he/she shall be given three points in the Sanitation Section.
- ~~(\*)~~(C) Applicants shall have satisfactorily completed Level I training or have a Level I license to be interviewed. The four levels of Business Enterprises facilities are defined as follows: Level I has no cooking or on-site food preparation and includes only service via vending machines or over the counter service including snacks, candy, pre-packaged sandwiches, coffee, and assorted beverages. Level II service is similar to a deli operation where hot and cold food is prepared on-site. Level III service includes all of the above with the addition of a grill and fryer. Level IV service consists of full-service cafeteria style facilities. An applicant shall score at least 60 total points to be awarded a location. If the applicant scores at least 55 points but less than 60 points, the interview panel may make a conditional award if the panel agrees it is in the best interest of the Business Enterprises Program.
- (6) An operator who is currently in a military North Carolina Business Enterprises facility shall be assigned 50 points in sub paragraph (e) (3). and any additional points for sub paragraph (e) (2).

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

*Eff. October 1, 1978;*

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

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

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

#### **10A NCAC 63C .0204 ESTABLISHING A NEW FACILITY**

(a) The SLA shall, on its own initiative, at the request of the ECBV or at the request of an agency that controls federal, state, or other property; conduct a survey of the property, blueprints, or other available information to determine whether the installation of a Business Enterprises facility is consonant with the Randolph Sheppard Act and North Carolina General Statutes.

(\*)(b) A [blind] licensee shall be temporarily assigned to a satellite facility to ensure uninterrupted service to the host facility and customers.

(1) The SLA shall use the following criteria:

(A) Before a licensee is offered a temporary opportunity, the area BEP representative and ECBV Transfer and Promotion Subcommittee shall discuss which licensee has the requisite skills to manage the facility temporarily; and

(\*)(B) Preference shall be given to a [blind] licensee with no current facility. If there is no blind licensee without a current facility, then shall be given to the [blind] licensee with the facility of lowest sales volume.

(2) Temporary assignment shall be for the period stated in the assignment agreement.

**Speight, Cynthia**

---

**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:25 PM  
**To:** Speight, Cynthia  
**Subject:** FW: SLA Proposed Revisions to BEP Rules  
**Attachments:** Proposed Revisions BEP Rules 2 12 18.docx

**Importance:** High

Cynthia Speight, MS  
 Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

(919) 527-6704 Office  
 (919) 733-9769 Fax  
 Cynthia.Speight@dhhs.nc.gov

309 Ashe Avenue, Fisher Building  
 Raleigh, NC 27606

2601 Mail Service Center  
 Raleigh, NC 27699-2601

-----Original Message-----

**From:** Speight, Cynthia  
**Sent:** Monday, February 12, 2018 6:03 PM  
**To:** steven shores <shores.cafe@gmail.com>; Chris <carriola@aol.com>; Ron Eller <mreller47@gmail.com>; vernoncox@bellsouth.net; Tim Jones (tmjnc2@gmail.com) <tmjnc2@gmail.com>; t49@mindspring.com; 'bgcamp@ec.rr.com' <bgcamp@ec.rr.com>; Gerald Fisher (geraldfisher@gmail.com) <geraldfisher@gmail.com>; easyvend@bellsouth.net  
**Cc:** Webb, William <william.webb@dhhs.nc.gov>  
**Subject:** SLA Proposed Revisions to BEP Rules  
**Importance:** High

Please find attached the BEP rules revisions proposed by the SLA. Efforts have been made to incorporate changes recommended by the ECBV. Thank you in advance for reviewing and providing feedback/suggestions no later than COB February 21st. Your collaboration is greatly appreciated.

Cynthia Speight, MS  
 Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

(919) 527-6704 Office  
 (919) 733-9769 Fax  
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-----Original Message-----

From: Speight, Cynthia

Sent: Thursday, February 08, 2018 5:32 PM

To: 'steven shores' <shores.cafe@gmail.com>; Chris <ccarriola@aol.com>; Ron Eller <mreller47@gmail.com>; 'vernoncox@bellsouth.net' <vernoncox@bellsouth.net>; Tim Jones (tmjnc2@gmail.com) <tmjnc2@gmail.com>; 't49@mindspring.com' <t49@mindspring.com>; bgcamp@ec.rr.com; Gerald Fisher (geraldfisher@gmail.com) <geraldfisher@gmail.com>; 'easyvend@bellsouth.net' <easyvend@bellsouth.net>

Cc: Webb, William <william.webb@dhhs.nc.gov>

Subject: RE: [External] 1st draft proposed changes to the sub chapter 700's

Thank you all very much! The BEP rule revisions that we are recommending for your consideration will be forwarded to you no later than 5:00 pm on Monday, Feb. 12th. These will not be in the final "clean copy" version. They will be in draft with the mark-ups, like the format that you have provided and is provided by the Rules Review Commission. Once all edits are agreed to, we will try to get a clean version to you for review as well.

Cynthia Speight, MS

Director

Division of Services for the Blind

North Carolina Department of Health and Human Services

(919) 527-6704 Office

(919) 733-9769 Fax

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Raleigh, NC 27606

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-----Original Message-----

From: steven shores [mailto:shores.cafe@gmail.com]  
Sent: Thursday, February 08, 2018 4:50 PM  
To: Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia <cynthia.speight@dhhs.nc.gov>  
Cc: Chris <carrriola@aol.com>; Ron Eller <mreller47@gmail.com>; stevenshores <shores.cafe@gmail.com>  
Subject: [External] 1st draft proposed changes to the sub chapter 700's

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam.<mailto:report.spam@nc.gov>

February 8, 2018

To Whom It May Concern:

Here is the 1st draft proposed changes to the sub chapter 700's.  
All proposed changes to the sub chapter sub sections have been sent.

Chris A.  
Ron E.  
Steven S.  
ECBV Rules Committee

- (d) (e) 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.
- (e) (f) If the Division finds that the public health, safety, or welfare requires emergency action, or incidence of gross misconduct or conduct so reprehensible as to bring discredit to the program, summary suspension of a license may be ordered, in accordance with G.S. 150B-3(c). The operator shall surrender his/her license on the effective date of the summary suspension order, and shall remain effective during all proceedings.

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

#### 10A NCAC 63C .0204 FILLING OF VACANCIES

- (a) ~~The Division shall make available a listing of available Business Enterprises facilities to all licensees.~~
- (b) ~~Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.~~
- (a) Transfers and promotions shall be based on the following procedures:
- (1) ~~The Division shall send a notice of available facilities to all operators and licensees, on the last 10 working day of the month. The notice shall provide a description of the vacancy, and who to contact for more information, and the deadline for receipt of application.~~
  - (2) ~~Applicants must be in good financial standing and not owe any money to the Business Enterprises Program to be eligible to apply for vacancies.~~
  - (3) ~~Applicants with three or more substantiated host complaints within a three-year period shall not be eligible to apply and interview for a vacancy.~~
  - (4) ~~All applications shall be post-marked by the 10th of the month following the notice and mailed to the office of the Chief of Business Enterprises, received by the Division no later than the deadline date identified in the notice. If not received by the Division by the deadline, the applicant shall be ineligible to apply for the vacancy.~~
  - (5) ~~The Interview Committee shall interview all applicants on the second Friday of the month which follows the application deadline, consist of:~~
    - (A) ~~the chief of the Business Enterprises Program or his or her designee;~~
    - (B) ~~an area rehabilitation supervisor or BEP representative~~
    - (C) ~~the vice-chair of the Elected Committee of Blind Vendors or his or her designee and~~
    - (d) ~~the chair of the transfer and promotion committee or his or her designee.~~
  - (6) ~~At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, and financial Aanalysis/ and Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his or her point total 10 business days prior to the interview. The applicant shall have five two working business days to review the point total and request any adjustments.~~
  - (7) ~~The Division shall use the following criteria in determining points:~~
    - (1) ~~Sanitation:~~
      - (A) ~~Five point 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 previous two years;~~
      - (D) ~~FiveTwo points shall be subtracted for any adjusted B-grade-grade received in the previous two years that is less than 90;~~
    - (2)(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) 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.

(B) Five point maximum;

~~(B)~~(C) 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

(3)

~~Performance: According to The Financial Analysis and 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 require each operator 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 point maximum;~~ 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;(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.~~

(4) Oral Exam/Interview:

(A) ~~30~~ 40 points maximum.(B) Interview shall be face-to-face (no conference calls) A conference call shall not be considered face-to-face.(C) ~~All applicants shall be interviewed. Each applicant shall complete the interview process to be considered for award of the facility.~~(D) ~~The Interview Committee shall consist of:~~(i) ~~The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief,~~

- (ii) — The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and
- (iii) — The Vice Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.
- (E) (D) The Oral Exam part shall consist of 10 - 20 questions drawn either from a pool of standard questions or questions developed by the Interview Committee. The oral exam questions shall relate to include any special needs questions that pertain to specific requirements of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam. The applicant shall receive one point by demonstrating basic knowledge, the applicant shall receive one and one-half points for demonstrating above average knowledge, and the applicant shall be awarded two points for demonstrating exceptional knowledge for each interview question. There shall be at least one question involving a calculation and a talking calculator shall be provided, although applicants may bring their own. The oral exam shall yield a possible 20 points.
- (F) The interview part shall consist of a variety of questions in a give and take format. Each member of the Interview Committee shall evaluate the applicant's response to the interview questions and shall award up to 10 additional points based on the applicant's previous food service experience, knowledge and financial performance. If the applicant meets the requirements for the facility, the applicant shall receive five additional points. If the applicant's qualifications exceed the requirements of the facility, he may be awarded up to ten additional points. The interview shall include the following elements: questions related to business philosophy to promote general discussion to enable the interview panel to evaluate the applicant's expertise, maturity, experience and ability; a discussion of any related work experience outside the Business Enterprises Program; at least two business math questions. Since points are awarded for seniority, time in the Business Enterprises Program shall not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants may bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.
- (G) — Each interviewer shall award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer shall be averaged and added to the applicant's points from the other Sections.
- (6) — Licensees and trainees:
- (6) (8) A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned 35 points in the Financial Analysis/ and Operating Standards category. If the licensee's scores 90 percent or above current score on the National Restaurant Association's ServSafe exam, is 90 percent or greater, an additional he/she shall be awarded three points shall be added in the sanitation category.
- (B) — A licensee with previous Business Enterprises experience shall be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records shall be considered, if available; or the applicant may take the National Restaurant Association's ServSafe exam. If the licensee scores 90 percent or above on the ServSafe exam, he/she shall be given three points in the Sanitation Section.
- (C) — Applicants shall have satisfactorily completed Level I training or have a Level I license to be interviewed. The four levels of Business Enterprises facilities are defined as follows: Level I has no cooking or on-site food preparation and includes only service via vending machines or over the counter service including snacks, candy, pre-packaged sandwiches, coffee, and assorted beverages. Level II service is similar to a deli operation where hot and cold food is prepared on-site. Level III service includes all of the above with the addition of a grill and fryer. Level IV service consists of full service cafeteria style facilities. An applicant shall score at least 60 total points to be awarded a location. If the applicant scores at least 55 points but less than 60 points, the interview panel may make a

conditional award if the panel agrees it is in the best interest of the Business Enterprises Program.

- (9) An operator who is currently managing a Business Enterprises military dining facility shall be assigned 50 points in sub paragraph (7) (3). and any additional points for sub paragraph (7).
- (5) (10) After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, [Customer Relations] and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), [(7)] of this Rule] calculating the point total for Part 6 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 applicant with the next highest applicant (if above 60 points) 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.
- (6) (11) Applicants shall be notified by telephone as soon as possible after their interview-the conclusion of interviews whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.
- (7) (12) Upon being awarded a location, the applicant shall have 30-20 business days to fill the vacancy. The Division and awarded operator shall agree to a different time frame if adhering to the 30-day 20 business 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) (13) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency 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 his the agreement was in effect, the applicant shall repeat the necessary on-the-job training. The Interview Committee may also recommend complete refresher course training to assure qualified management.
- (9) (14) 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) (15) An applicant must have operated a Business Enterprises facility 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. This standard is not applicable to an operator of a military feeding facility.
- (16) 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. 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 Part (7) of this Rule if the financial performance analysis was completed within the required three year period.
- (12) (17) Financial analyses of facilities shall be done completed every two three years. The analysis shall be on the facility, not the operator; however, an operator may request a new analysis after at least four nine months in the new facility.
- (13) (18) 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.
- (12) (19) An operator applicant may 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. For this purpose immediate 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. 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)(20) 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~~ three interviews per year. After that, applicants shall bear their own expenses for coming to interviews. Licensees 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;  
Eff. October 1, 1978;  
Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993;  
February 1, 1986; February 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.  
November 23, 2015.  
Readopted Eff. \_\_\_\_\_.*

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

- a) Each licensee or operator who accepts a Business Enterprises assignment must enter into a contractual operating agreement with the Division upon initial placement and upon subsequent reassignment.
- (b) ~~A copy of the~~ When a permit or contract with the sponsor of the site upon which the Business Enterprises facility is located host facility is developed, it shall become a part of the operator agreement, and the operator shall conduct the business in accordance with the provisions of that permit or contract.
- (c) The operator agreement shall include provisions which specify:
- (1) ~~the responsibilities of the licensed operator as contained in the rules in this Subchapter;~~
  - (2) ~~the responsibilities of the Division as contained in the rules in this Subchapter;~~
  - (3) ~~that the licensed operator will receive the net proceeds [in accordance with 45 CFR 1369.1(k)34 CFR 395.9] from the Business Enterprises facility he/she operates in accordance with Section .0700 of this Subchapter;~~
  - (4) ~~the right of the operator~~ operator's right to terminate the agreement at any time;
  - (5) ~~that the agreement will be terminated shall terminate upon termination of the permit or contract with the sponsor of the site upon which the Business Enterprises facility is located; host facility~~
  - (6) ~~that the agreement will be terminated shall terminate upon failure of the licensed operator to operate the Business Enterprises facility in accordance with the agreement or applicable federal, state, or local laws or regulations;~~
  - (7) ~~that the agreement will be terminated shall terminate upon the Division closing of a facility which the Division has determined offers no possibility of being profitable.~~

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.1; 34 C.F.R. 395.3; 20 U.S.C. sec. 107;  
Eff. October 1, 1978;  
Amended Eff. August 1, 2002; February 1, 1984; February 1, 1983.  
Readopted Eff. \_\_\_\_\_.*

#### 10A NCAC 63C .0206 CONFIDENTIAL INFORMATION

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

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

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

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

*History Note:* Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107;  
 Eff. October 1, 1978;  
 Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984.  
 Readopted Eff. \_\_\_\_\_.

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

- (a) Every operator or licensee has the right to present a problem or appeal free from interference, restraint, coercion, discrimination, or reprisal. This policy shall be covered fully during orientation procedures for new operators/licensees.
- (b) When presenting an appeal, an operator or licensee may be accompanied by a person or persons of his choice.
- (c) The filing of a complaint with the Division shall indicate consent by the blind operator or licensee for the release of such information as is necessary for the conduct of the administrative appeal.

*History Note:* Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec 107;  
 Eff. October 1, 1978;  
 Amended Eff. February 1, 1984, February 1, 1981;  
 Recodified Paragraph (f) to Rule .0212 Eff. May 30, 1984;  
 Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1986.  
 Readopted Eff. \_\_\_\_\_.

#### **10A NCAC 63C .0403 PROCEDURE**

- (a) The operator/ or licensee shall discuss the problem with the Division staff person taking the action with which the operator is dissatisfied and request specific action in writing to resolve the grievance. This written request shall be submitted to the Division and this discussion ~~shall be held~~ within 15 working days of the occurrence of the action challenged by the operator. The operator/ or licensee shall receive a written response within five working days following the discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval.
- (b) If the complaint is not resolved and the operator or licensee is not satisfied with the outcome of Paragraph (a) of this Rule, he or she shall have 15 working days to ask for a review by the operator relations committee in writing. Within five working days after the committee receives the written request for review, the operator or licensee shall be notified of the date of the hearing, which shall be held within 25 working days after the operator's/licensee's request for a hearing was received by the committee. The committee shall render its decision within 20 working days after the hearing.

- (c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator or licensee or the Division staff person responsible for the initial action, the matter may be referred by the operator or licensee or the Division staff person to the director of the Division. Any request for review shall be submitted in writing to the Director within 15 working days after the operator relations committee has rendered its decision. The party requesting the referral shall provide a written summary of the specific facts of the complaint a copy of the decision from the operator relations committee and request for 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 15 working days, and his or her decision shall be announced immediately to all parties concerned.
- (d) If the complaint is not resolved and the operator or licensee is not satisfied with steps of Paragraphs (a) through (c) of this Rule, then the operator or licensee may file a complaint with the Division requesting a full evidentiary hearing.
- (e) If a blind operator or licensee requests a full evidentiary hearing, such request shall be made in writing within 15 working days after the director's ~~adverse direction decision is~~ rendered through the procedures in this Rule.
- (f) A blind operator or licensee shall request a full evidentiary hearing in writing. This request shall be transmitted to the director of the Division personally 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, to the extent that such article does not conflict with these Rules pertaining to grievance procedures or any federal law or regulation.
- (g) A blind operator or licensee 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.~~
- (h) Reader services or other communication services shall be arranged for the blind operator or licensee ~~should be so~~ upon request. Transportation costs and per diem shall be provided also to the blind operator or licensee during the pendency of the evidentiary hearing, if the location of the hearing is in a city county other than the legal residence of the operator or licensee.
- (i) The hearing shall be held at a time and place convenient and accessible to the blind operator or licensee requesting a full evidentiary hearing. The blind operator or licensee 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 hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division within 15 working days of its receipt of such a request, unless the Division and the blind operator or licensee mutually, in writing, agree to some other period of time. The Division shall notify the blind operator or licensee in writing of the time and place fixed for the hearing and of his right to be represented by legal or other counsel. The Division shall provide the blind operator or licensee a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.
- (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.
- (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.
- (l) Both the blind operator or 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.
- (m) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.
- (n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay all transcript costs and shall provide the blind operator or licensee with at least one copy of the transcript.
- (o) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.
- (p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working days after

the receipt of the official transcript. The decision shall be mailed promptly to the blind operator or licensee and the division.

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

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

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

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

The Division shall provide for biennial election among the operators in the program to elect a state committee of blind operators called the Elected Committee of Vendors. This Elected Committee of Vendors shall be representative of operators on the basis of geography and shall be proportionally representative of operators on federal property. The Elected Committee of Vendors shall consist of representatives from the four geographical regions and one region comprised of all Federal facilities.

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

#### **10A NCAC 63C .0506 ORGANIZATION AND OPERATION**

(a) ~~The officers of the Elected Committee of Vendors shall be a chairman and a vice chairman. They shall be elected by the Elected Committee of Vendors from among Elected Committee of Vendors members.~~

(b) ~~Vacancies in any of the elective offices shall be filled by the Elected Committee of Vendors members for the unexpired term.~~

(c) ~~The chairman shall preside over all the meetings of the Elected Committee of Vendors. He shall appoint subcommittees at such time as the business of the Elected Committee of Vendors may warrant, except for the Operator Relations Committee which shall be elected by the Elected Committee of Vendors from its members. The chairman shall appoint temporary replacements to this subcommittee as needed to fill any vacancy until a new member may be elected. He shall also appoint a temporary replacement for any Operator Relations Committee member who has filed an appeal and whose appeal is pending before the Operator Relations Committee. The chairman shall serve as non-voting ex officio member of all subcommittees.~~

(d) ~~In the absence or disability of the chairman, the vice chairman shall assume all the duties of the chairman.~~

(e) ~~The meetings shall be conducted according to Roberts Rules of Order.~~

(f) ~~A majority shall constitute a quorum.~~

(a) The Division shall provide for the biennial election of a State Elected Committee of Blind Vendors (ECBV) which, to the extent possible, shall be fully representative of all blind vendors in the Business Enterprises program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in

any election shall not be conditioned upon the payment of dues or any other fees.

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

**Speight, Cynthia**

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**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:25 PM  
**To:** Speight, Cynthia  
**Subject:** FW: [External] 2nd draft propose change to section 204  
**Attachments:** 2nd draft propose changes to section 204.docx

Cynthia Speight, MS  
 Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

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 Cynthia.Speight@dhhs.nc.gov

309 Ashe Avenue, Fisher Building  
 Raleigh, NC 27606

2601 Mail Service Center  
 Raleigh, NC 27699-2601

-----Original Message-----

**From:** steven shores <shores.cafe@gmail.com>  
**Sent:** Wednesday, February 14, 2018 5:33 PM  
**To:** Speight, Cynthia <cynthia.speight@dhhs.nc.gov>  
**Cc:** Webb, William <william.webb@dhhs.nc.gov>; Chris <ccarriola@aol.com>; Ron Eller <mreller47@gmail.com>  
**Subject:** Re: [External] 2nd draft propose change to section 204

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam.<mailto:report.spam@nc.gov>

On 2/14/18, Speight, Cynthia <cynthia.speight@dhhs.nc.gov> wrote:

> Good Afternoon,  
 >  
 > There wasn't an attachment.  
 >  
 > Cynthia Speight, MS  
 > Director  
 > Division of Services for the Blind  
 > North Carolina Department of Health and Human Services  
 >  
 > (919) 527-6704 Office  
 > (919) 733-9769 Fax  
 > Cynthia.Speight@dhhs.nc.gov  
 >

- > 309 Ashe Avenue, Fisher Building
- > Raleigh, NC 27606
- >
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- > Raleigh, NC 27699-2601
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- > Carolina Public Records Law and may be disclosed to third parties.

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  - > Twitter YouTube
  - > Unauthorized disclosure of juvenile, health, legally privileged, or
  - > otherwise confidential information, including confidential information
  - > relating to an ongoing State procurement effort, is prohibited by law.
  - > If you have received this e-mail in error, please notify the sender
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- > Email correspondence to and from this address is subject to the North
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- > an authorized State official. Unauthorized disclosure of juvenile,
- > health, legally privileged, or otherwise confidential information,
- > including confidential information relating to an ongoing State
- > procurement effort, is prohibited by law. If you have received this
- > email in error, please notify the sender immediately and delete all records of this email.

- >
- > -----Original Message-----
- > From: steven shores [mailto:shores.cafe@gmail.com]
- > Sent: Wednesday, February 14, 2018 4:11 PM
- > To: Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia
- > <cynthia.speight@dhhs.nc.gov>
- > Cc: Chris <carriola@aol.com>; Ron Eller <mreller47@gmail.com>; steven
- > shores <shores.cafe@gmail.com>
- > Subject: [External] 2nd draft propose change to section 204

- >
- > CAUTION: External email. Do not click links or open attachments unless
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- > Spam.<mailto:report.spam@nc.gov>

- >
- >
- > February 14, 2018
- >
- > To Whom It May Concern:

- >
- > This is the 2nd draft proposed changes to section 204.
- > This is an additional serious section of the 200's for editing and changes.

- >
- > Chris A.
- > Ron E.
- > Steven S.

- (\*) editing  
 ( ) add word(s)  
 [ ] delete or strike word(s)

#### 10A NCAC 63C .0204 FILLING OF VACANCIES

(a) ~~The Division shall make available a listing of available Business Enterprises facilities to all licensees.~~  
 (b) ~~Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.~~

(a) Transfers and promotions shall be based on the following procedures:

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

(work for clarity)

- (2) ~~Applicants (\*) must be in (good financial standing)(?) and not owe any money to the Business Enterprises Program to be eligible to apply for vacancies.~~

- (3) ~~Applicants with three or more substantiated host complaints within a three-year period shall not be eligible to apply and interview for a vacancy.~~

- (4) ~~All applications shall be post-marked by the 10th of the month following the notice and mailed to the office of the Chief of Business Enterprises, received by the Division no later than the deadline date identified in the notice. If not received by the Division by the deadline, the applicant shall be (\*) ineligible to (interview)[apply] for the vacancy.~~

- (5) ~~The Interview Committee shall interview all applicants on the second Friday of the month which follows the application deadline, consist of:~~

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

(B) ~~an area rehabilitation supervisor or BEP representative~~

(C) ~~the vice-chair of the Elected Committee of Blind Vendors or his or her designee and~~

(d). ~~the chair of the transfer and promotion committee or his or her designee.~~

- (6) ~~At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, and financial analysis, and Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his or her point total 10 business days prior to the interview. The applicant shall have five two working business days to review the point total and request any adjustments.~~

(edit – numbering scheme out of sequence)

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

(1) ~~Sanitation:~~

(A) ~~Ten Five point 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 previous two years;~~

(D) ~~Five Two points shall be subtracted for any adjusted B grade-grade received in the previous two years that is less than 90;~~

(?) (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) ~~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.~~

(B) ~~Five point maximum;~~

- ~~(B)~~(C) 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

- (3) Performance: ~~According to The Financial Analysis and 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 require each operator 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 point maximum; 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;  
 (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.~~  
 (4) Oral Exam/Interview:  
 (A) ~~30~~40 points maximum.  
 (B) Interview shall be face-to-face ~~(no conference calls)~~ A conference call shall not be considered face-to-face.  
 (C) All applicants shall be interviewed. Each applicant shall complete the interview process to be considered for award of the facility.  
 (D) ~~The Interview Committee shall consist of:~~  
 (i) ~~The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief;~~  
 (ii) ~~The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and~~  
 (iii) ~~The Vice Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.~~

\*\*\* (questions should be objective - right or wrong not subjective by interviewee and 2 business math questions relating to facility type) \*\*\*

~~\*(work)(E) (D)~~ The Oral Exam part shall consist of 10 – 20 ~~\*(objective)~~ questions drawn either from a pool of standard questions ~~or questions~~ developed by the Interview Committee. The oral exam questions shall ~~\*[relate to include any special needs ]\*(consist of) questions that pertain to (\*)~~ specific requirements of] the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam. The applicant shall receive one point by demonstrating basic knowledge, the applicant shall receive one and one-half points for demonstrating above average knowledge, and the applicant shall be awarded two points for demonstrating exceptional knowledge for each interview question. There shall be at least one question involving a calculation and a talking calculator shall be provided, although applicants may bring their own. The oral exam shall yield a possible 20 points.

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

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

(6) Licensees and trainees:

~~\*(work)(6)(8)~~ A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned ~~(\*)~~[35](40) points in the ~~F~~financial ~~A~~analysis ~~and~~ ~~O~~perating ~~S~~tandards category. If the licensee's scores 90 percent or above ~~current score~~ on the National Restaurant Association's ServSafe exam, ~~is 90 percent or greater, an additional~~he/she shall be awarded ~~(\*)~~[three](five) points shall be added in the sanitation category.

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

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

~~\*(work)(9)~~ An operator who is currently managing a Business Enterprises military dining facility shall be assigned ~~\*(55)[50]~~ points in sub paragraph (7)~~\*(.)~~ ~~\*(3).~~ and any additional points for sub paragraph (7).]

~~\*(work~~ you need a minimum to assure applicant has the required knowledge to be placed)

~~(5)(10)~~ After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, [Customer Relations] and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), [(7)] of this Rule] calculating the point total for Part 6 of this Rule for each applicant, the applicant with the highest point total (~~\*(if above (75) 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 applicant with the next highest applicant (~~\*(if above (75)[60] points)~~) 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.

~~(6)(11)~~ Applicants shall be notified by telephone as soon as possible after their interview the conclusion of interviews whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.

~~\*(work~~ satalite if appeal)

~~(7)(12)~~ Upon being awarded a location, the applicant shall have ~~30-20~~ business days to fill the vacancy. The Division and awarded operator shall agree to a different time frame if adhering to the ~~30-day~~ ~~20 business day~~ time frame would cause a hardship to the applicant awarded the facility. (~~\*(keep)~~\*(The location shall not be filled for (five)[15] (business)[working] days following the award to allow time for administrative appeals to be filed)\*. If an appeal is filed, (~~\*\*\* keep~~)(the location shall not be filled until the appeal is resolved. (applicant may satalite){If there is only one applicant for a location, the 15-day waiting period shall not apply.]

~~(8)(13)~~ If an applicant is awarded a facility and has not had an Operator Agreement with the Agency 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 his the agreement was in effect, the applicant (may be required)[shall]

repeat the necessary on the job training. The Interview Committee may also recommend complete refresher course training to assure qualified management.

~~\*\* (keep)(work)~~

~~(9)(14)~~ Licensees/operators not selected may file an administrative appeal as provided for in Subchapter 63C Section .0400. The ~~\*(five)[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.

~~(work~~ 9 months are required for financial analysis)

~~(10)(15)~~ An applicant must have operated a Business Enterprises facility for ~~\*(nine)[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. (~~\*(remove)~~[This standard is not applicable to an operator of a military feeding facility.]

~~(16)~~ 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. 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 Part (7) of this Rule if the financial performance analysis was completed within the required three year period.

~~(12)(17)~~ Financial analyses of facilities shall be ~~done~~ completed every ~~two~~ three years. The analysis shall be on the facility, not the operator; however, an operator may request a new analysis after at least ~~four~~ nine months in the new facility.

~~\*(work/keep)~~ (13)(18) (\* 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] (may be required) 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.

- (12) (19) ~~An operator applicant may 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. ~~For this purpose immediate~~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. ~~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 subcommittee 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)(20) 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~~three interviews per year. After that, applicants shall bear their own expenses for coming to interviews. ~~Licensees~~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;  
Eff. October 1, 1978;  
Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993;  
February 1, 1986; February 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.  
November 23, 2015.  
Readopted Eff. \_\_\_\_\_.*

**Speight, Cynthia**

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**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:29 PM  
**To:** Speight, Cynthia  
**Subject:** FW: Second Revision of SLA Proposed BEP Rules  
**Attachments:** Proposed Revisions BEP Rules 2 28 18.docx

**Importance:** High

Cynthia Speight, MS  
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 North Carolina Department of Health and Human Services

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-----Original Message-----

**From:** Speight, Cynthia  
**Sent:** Wednesday, February 28, 2018 5:33 PM  
**To:** steven shores <shores.cafe@gmail.com>; Chris <ccarriola@aol.com>; Ron Eller <mreller47@gmail.com>; vernoncox@bellsouth.net; Tim Jones (tmjnc2@gmail.com) <tmjnc2@gmail.com>; t49@mindspring.com; 'bgcamp@ec.rr.com' <bgcamp@ec.rr.com>; Gerald Fisher (geraldfisher@gmail.com) <geraldfisher@gmail.com>; easyvend@bellsouth.net  
**Cc:** Webb, William <william.webb@dhhs.nc.gov>  
**Subject:** Second Revision of SLA Proposed BEP Rules  
**Importance:** High

Please find attached the second revision of the BEP rules proposed by the SLA. Thank you in advance for reviewing and providing feedback/suggestions as soon as possible.

Cynthia Speight, MS  
 Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

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

(a) Transfers and promotions shall be based on the following procedures:

- (1) The Division shall send a notice of available facilities to all operators and licensees. The notice shall provide a description of the vacancy, who to contact for more information and the deadline for receipt of application.
- (2) Applicants must not owe any money to the Business Enterprises Program to be eligible to apply for vacancies.
- (3) Applicants with three or more substantiated host complaints within a three-year period shall not be eligible to apply for a vacancy.
- (4) All applications shall be received by the Division no later than the deadline date identified in the notice. If not received by the Division by the deadline, the applicant shall be ineligible to interview for the vacancy.
- (5) The Interview Committee shall consist of:
  - (A) the chief of the Business Enterprises Program or his or her designee;
  - (B) an area rehabilitation supervisor or BEP representative
  - (C) the vice-chair of the Elected Committee of Blind Vendors or his or her designee and
  - (d). the chair of the transfer and promotion committee or his or her designee.
- (6) The Business Enterprises Counselor shall calculate the applicant's points for sanitation, seniority, and financial analysis and operating standards and inform the applicant of his or her point total 10 business days prior to the interview. The applicant shall have two business days to review the point total and request any adjustments.
- (7) The Division shall use the following criteria in determining points:
  - (1) Sanitation:
    - (A) Five points maximum;
    - (B) One point for each sanitation grade point above ninety;
    - (C) Sanitation grade shall be the average of all sanitation scores received during the previous two years;
    - (D) Two points shall be subtracted for any grade received in the previous two years that is less than 90;
  - (2) Seniority:
    - (A) 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 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.

(B) Five point maximum;

(C) 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

(3) Performance: The Financial analysis/ and operating standard require each operator to maintain 85 percent of the optimum standard established for each facility for sales and gross profit.

(A) 50 points maximum;

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

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

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

(E) Applicants shall receive five points for meeting or exceeding 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;

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

(4) Oral Exam/Interview:

(A) 40 points maximum.

(B) Interview shall be face-to-face. A conference call shall not be considered face-to-face.

(C) Each applicant shall complete the interview process to be considered for award of the facility.

(D) The Oral Exam shall consist of 10 - 20 objective questions drawn from a pool of standard questions developed by the Interview Committee. The oral exam shall include

questions that pertain to the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators.

- (8) A licensee shall be assigned 40 points in the financial analysis/ and operating standards category. If the licensee's current score on the National Restaurant Association's ServSafe exam, is 90 percent or greater, an additional three points shall be added in the sanitation category.
- (9) An operator who is currently managing a Business Enterprises military dining facility shall be assigned 55 points in sub paragraph (7) (3). and any additional points for the remaining categories in sub paragraph (7).
- (10) After calculating the point total for Part 7 of this Rule for each applicant, the applicant with the highest point total shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest point total 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) An applicant must have operated a Business Enterprises facility for nine 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.
- (15) 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

### 10A NCAC 63C .0403 PROCEDURE

(a) The operator or licensee shall have 15 business days from the date of the occurrence of the action challenged by the operator to submit a grievance in writing to the Division. If the grievance is not received within 15 business days or if after 15 business days the grievance fails to comply with subsections (a)1 or (a)2 of this Rule, the grievance will be invalid and the Division's action final. The grievance shall:

1. State the action with which the operator is dissatisfied; and
2. Request specific action to resolve the grievance

(b) The chief of the Business Enterprises Program or his or her designee shall:

1. Discuss the problem with the operator or licensee within 5 business days of receiving a grievance; and
2. Send the operator/or licensee a written response with the Division's decision in the operator's or licensee's preferred format within 5 business days following the discussion
3. Any decision made by agency personnel at this step shall be subject to supervisory review and approval.

(c) If the complaint is not resolved and the operator or licensee is not satisfied with the outcome of Paragraph (b) of this Rule, he or she shall have 5 business days from the receipt of the Division's decision to ask for a review by the operator relations committee in writing. Within five business days after the committee receives the written request for review;

1. The operator or licensee shall be notified by the operator relations committee of the date of the hearing, which shall be held within 10 business days after the operator's or licensee's request for a hearing is received by the committee.

2. The committee shall render its decision within 5 business days after the hearing.

(d) If the decision reached in Paragraph (c) of this Rule is not satisfactory to the operator or licensee or the Division staff person responsible for the initial action, the matter may be referred by the operator or licensee or the Division staff person to the director of the Division. Any request for review shall be submitted in writing to the Director within 5 business days after the operator relations committee has rendered its decision. The party requesting the referral shall provide:

1. a copy of the decision from the operator relations committee ;and
2. 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 5 business days, and his or her decision shall be announced immediately to all parties concerned.

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

(f) If a blind operator or licensee requests a full evidentiary hearing, such request shall be made in writing within 15 business days after the director's decision is rendered through the procedures in this Rule.

(g) A blind operator or licensee shall request a full evidentiary hearing in writing. This request shall be transmitted to the director of the Division personally or by certified mail, return receipt requested, transmitted through the Elected Committee of Blind 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, to the extent that such article does not conflict with these Rules pertaining to grievance procedures or any federal law or regulation.

(h) A blind operator or licensee shall be entitled to legal counsel or other representation in a full evidentiary hearing.

(i) Reader services or other communication services shall be arranged for the blind operator or licensee upon request. Transportation costs and per diem shall be provided also to the blind operator or licensee during the pendency of the evidentiary hearing, if the location of the hearing is in a county other than the legal residence of the operator or licensee.

(j) The hearing shall be held at a time and place convenient and accessible to the blind operator or licensee requesting a full evidentiary hearing. The blind operator or licensee shall be entitled to have the hearing held in the county of his or her residence unless he waives this right. A hearing held during regular Division working 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 mutually, in writing, agree to some other period of time. The Division shall notify the blind operator or licensee in writing of the time and place fixed for the hearing and of his or her right to be represented by legal or other counsel. The Division shall provide the blind operator or licensee a copy of the hearing procedures and other relevant information necessary to enable him to prepare his or her case for the hearing.

(k) 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.

(l) 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.

(m) Both the blind operator or 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.

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

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

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

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

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

(s) The results of the arbitration shall be considered the final agency action 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. and the operator or licensee shall have exhausted his or her administrative remedies.

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

*Eff. October 1, 1978;*

*Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983; December 1, 1981.*

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

**Speight, Cynthia**

---

**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:43 PM  
**To:** Speight, Cynthia  
**Subject:** FW: [External] 3rd draft of 200's  
**Attachments:** 3rd draft proposed changes to the subchapter 200's.docx

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-----Original Message-----

**From:** steven shores <shores.cafe@gmail.com>  
**Sent:** Thursday, March 01, 2018 11:51 AM  
**To:** Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia <cynthia.speight@dhhs.nc.gov>; Steven Shores <shores.cafe@gmail.com>  
**Cc:** Chillren <carrriola@aol.com>; Ron Eller <mreller47@gmail.com>  
**Subject:** [External] 3rd draft of 200's

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March 1, 2018

To Whom It May Concern

This is the 3rd draft proposal of the 63c section 200's Please send your final completed formatted rule file which the Division is submitting to the Commission For The Blind by the close of the day March 7, 2018.

Thanks

Chris A.  
Ron E.  
Steven S.  
ECBV Rules Committee

---

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- (20) Failing to comply with federal or state law prohibiting discrimination in hiring and service to customers;
- (21) Failing to comply with the operator's responsibilities in this Subchapter or the operator's agreement.

(DELETE)

- (22) Failing to complete annual continuing education training requirement.

(e) 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.

(DELETE this rule is to subjective)

(f) If the Division finds that the public health, safety, or welfare requires emergency action, or incidence of gross misconduct or conduct so reprehensible as to bring discredit to the program, summary suspension of a license may be ordered, in accordance with G.S. 150B-3(c). The operator shall surrender his or her license on the effective date of the summary suspension order, and shall remain effective during all proceedings.

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

#### **10A NCAC 63C .0204 FILLING OF VACANCIES**

(a) Transfers and promotions shall be based on the following procedures:

- (1) The Division shall send a notice of available facilities to all operators and licensees. The notice shall provide a description of the vacancy, who to contact for more information and the deadline for receipt of application.
- (2) Applicants must not owe any money to the Business Enterprises Program to be eligible to apply for vacancies.
- (3) Applicants with three or more substantiated host complaints within a three-year period shall not be eligible to apply for a vacancy.
- (4) All applications shall be received by the Division no later than the deadline date identified in the notice. If not received by the Division

by the deadline, the applicant shall be ineligible to interview for the vacancy.

- (5) The Interview Committee shall consist of:
- (A) the chief of the Business Enterprises Program or his or her designee;
  - (B) an area rehabilitation supervisor or BEP representative
  - (C) the vice-chair of the Elected Committee of Blind Vendors or his \*\*\*or her \*\*\*ECBV) designee and
  - (d). the chair of the transfer and promotion committee or his or \*\*\*her \*\*\* (ECBV) designee.
- (6) The Business Enterprises Counselor shall calculate the applicant's points for sanitation, seniority, and financial analysis and operating standards and inform the applicant of his or her point total 10 business days prior to the interview. The applicant shall have two business days to review the point total and request any adjustments.
- (7) The Division shall use the following criteria in determining points:
- (1) Sanitation:
    - (A) Five points maximum;
    - (B) One point for each sanitation grade point above ninety;
    - (C) Sanitation grade shall be the average of all sanitation scores received during the previous two years;
    - \*\*\* (DELETE)
    - (D) Two points shall be subtracted for any grade received in the previous two years that is less than 90;
  - (2) Seniority:
    - (A) 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 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.
    - (B) Five point maximum;
    - (C) 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

- (3) Performance: The Financial analysis/ and operating standard require each operator to maintain 85 percent of the optimum standard established for each facility for sales and gross profit.
- (A) 50 points maximum;
  - (B) Applicants shall receive 15 points for meeting or exceeding 85 percent of their sales standard;
  - (C) Applicants shall receive 15 points for meeting or exceeding 85 percent of their gross profit percentage standard;
  - (D) Applicants shall receive five points for meeting or exceeding 90 percent of their sales optimum;
  - (E) Applicants shall receive five points for meeting or exceeding 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;
  - (G) Applicants shall receive five points for meeting or exceeding 95.01 percent of their gross profit percentage optimum.
- (4) Oral Exam/Interview:
- (A) 40 points maximum.
  - (B) Interview shall be face-to-face. A conference call shall not be considered face-to-face.
  - (C) Each applicant shall complete the interview process to be considered for award of the facility.  
 \*\*(What questions developed by the interview committee?)  
 \*\*\* (Facilities are business – two calculating math questions)
  - (D) The Oral Exam shall consist of 10 - 20 objective questions drawn from a pool of standard questions (or question )developed by the Interview Committee.  
 \*\*\* (There shall be at least two math questions; at least 1 calculating math question.) The oral exam shall include questions that pertain to the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators.
- (8) A licensee shall be assigned 40 points in the financial analysis/ and operating standards category. If the licensee's current score on the National Restaurant Association's ServSafe exam, is 90 percent or

greater, an additional three points shall be added in the sanitation category.

\*\*\* (ONLY 50 points plus any seniority points)

- (9) An operator who is currently managing a Business Enterprises military dining facility shall be assigned \*\*\* (50) [55} points in sub paragraph (7) (3). and any additional points \*\*\* ( points in sub paragraph (7) (2).) \*\*\* delete) [for the (remaining categories in sub paragraph (7).]

\*\*\* (if still tied flip a coin)

- (10) After calculating the point total for Part 7 of this Rule for each applicant, the applicant with the highest point total shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest point total 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.
- (11) 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.

\*\*\*\*\* (DIVISION must need time to allow for a grievance if not awarded facility)

\*\*\*\*

- (12) 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. \*\*\* (do not award location until grievance is settled)
- (13) 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 months)

- (14) An applicant must have operated a Business Enterprises facility for \*\*\*nine 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.
- (15) 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 Part (7) of this Rule if the financial performance analysis was completed within the required three-year period.
- (16) 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.
- (17) 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.
- (18) 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; Eff. October 1, 1978; Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986; February 1, 1981; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015. Readopted Eff. \_\_\_\_\_.*

**Speight, Cynthia**

---

**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:46 PM  
**To:** Speight, Cynthia  
**Subject:** FW: SUBCHAPTER 63C 3 16 18 Clean  
**Attachments:** SUBCHAPTER 63C 3 16 18 Clean.docx; SUBCHAPTER 63C 3 16 18.docx

**Cynthia Speight, MS**

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---

**From:** Speight, Cynthia  
**Sent:** Friday, March 16, 2018 12:38 PM  
**To:** steven shores <shores.cafe@gmail.com>; Chris <carrila@aol.com>; Ron Eller <mreller47@gmail.com>; Gerald Fisher (geraldfisher@gmail.com) <geraldfisher@gmail.com>; vernoncox@bellsouth.net; Tim Jones (tmjnc2@gmail.com) <tmjnc2@gmail.com>; t49@mindspring.com; 'bgcamp@ec.rr.com' <bgcamp@ec.rr.com>; easyvend@bellsouth.net  
**Cc:** Webb, William <william.webb@dhhs.nc.gov>; Trotter, Kathie <kathie.trotter@dhhs.nc.gov>; Myers, Tara <tara.myers@dhhs.nc.gov>  
**Subject:** SUBCHAPTER 63C 3 16 18 Clean

Good Afternoon,

Attached are the proposed edits to 63C .0103, .0203, .0204, .0403 and .0601 for your review and input. Thank you.

Cynthia Speight, MS  
 Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

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1                   *Eff. October 1, 1978;*  
 2                   *Amended Eff. August 1, 2002; February 1, 1986.*  
 3                   *Readopted Eff. \_\_\_\_\_.*  
 4

5   **10A NCAC 63C .0204    FILLING OF VACANCIES**

6   (a) Transfers and promotions shall be based on the following procedures:

- 7           (1) The Division shall send a notice of available facilities to all operators and licensees. The notice  
 8           shall provide a description of the vacancy, who to contact for more information and the deadline for  
 9           receipt of application.  
 10          (2) Applicants must not owe any money to the Business Enterprises Program to be eligible to apply for  
 11          vacancies.  
 12          (3) Applicants with three or more substantiated host complaints within a three-year period shall not be  
 13          eligible to apply for a vacancy.  
 14          (4) All applications shall be received by the Division no later than the deadline date identified in the  
 15          notice. If not received by the Division by the deadline, the applicant shall be ineligible to interview  
 16          for the vacancy.

17   (b) The Interview Committee shall consist of:

- 18           (1) the chief of the Business Enterprises Program or his or her designee;  
 19           (2) an area rehabilitation supervisor or BEP representative;  
 20           (3) the vice-chair of the Elected Committee of Blind Vendors or ECBV designee; and  
 21           (4) the chair of the transfer and promotion committee or ECBV designee.

22   (c) The Business Enterprises counselor shall calculate the applicant's points for sanitation, seniority and financial  
 23   analysis and operating standards and inform the applicant of his or her point total ten business days prior to the  
 24   interview. The applicant shall have two business days to review the point total and request any adjustments.

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

- 26          (1) Sanitation:  
 27              (A) Five points maximum;  
 28              (B) One point for each sanitation grade point above ninety;  
 29              (C) Sanitation grade shall be the average of all sanitation scores received during the previous  
 30              two years;  
 31          (2) Seniority:  
 32              (A) Five points maximum;  
 33              (B) Seniority points shall be awarded as follows:  
 34                  Years in Business Enterprises Program – Points  
 35                              0 to 4.99 - 0 points  
 36                              5 to 9.99 - 1 point  
 37                              10 to 14.99 - 2 points

1 15 to 19.99 - 3 points

2 20 to 24.99 - 4 points

3 25 and over - 5 points

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

10 (3) Performance according to financial analysis and operating standards require each operator to  
11 maintain 85 percent of the optimum standard established for each facility for sales and gross profit.

12 (A) 50 Points Maximum;

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

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

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

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

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

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

25 (4) Oral Exam/Interview:

26 (A) 40 points maximum.

27 (B) Interview shall be face to face. A conference call shall not be considered face-to-face.

28 (C) Each applicant shall complete the interview process to be considered for award of the  
29 facility.

30 (D) The Oral Exam part shall consist of 10 - 20 questions drawn either from a pool of standard  
31 questions ~~or~~ developed by the Interview Committee. There shall be at least two math  
32 questions; at least one calculating math question. The Interview Committee shall also  
33 develop desired answers for the interview questions prior to the interview.

34 (5) A licensee shall be assigned 40 points in the financial analysis operating standards category. If the  
35 licensee's current score on the National Restaurant Association's ServSafe exam is 90 percent or  
36 greater, an additional three points shall be added in the sanitation category.

- 1           (6) An operator who is currently managing a Business Enterprises military dining facility shall be  
2           assigned 50 points in subparagraph 3 plus any seniority points.
- 3           (7) After calculating the point total of this Rule for each applicant, the applicant with the highest point  
4           total shall be awarded the vacancy. If the applicant with the highest point total declines to accept  
5           the location, it shall be offered to the applicant with the next highest point total and so on. In the  
6           case of an exact tie, the seniority points of the two applicants will be deducted and the total points  
7           recalculated. The applicant with the recalculated highest points shall be awarded the location. If  
8           the recalculated score for the applicants is an exact tie, the applicant with the highest seniority points  
9           shall be awarded the location.
- 10          (8) Applicants shall be notified by telephone as soon as possible after the conclusion of interviews  
11          whether or not they have been awarded a location. This notification shall be followed up in writing.
- 12          (9) The location may not be filled for 15 business days following the award to allow time for  
13          administrative appeals to be filed. If an appeal is filed, the location will not be filled until the appeal  
14          is resolved. If there is only one applicant for a location, the 15-day waiting period does not apply.
- 15          (10) Upon being awarded a location, the applicant shall have 20 business days to fill the vacancy. The  
16          Division and awarded operator shall agree to a different time frame if adhering to the 20 business  
17          days' time frame would cause a hardship.
- 18          (11) If an applicant is awarded a facility and has not had an Operator Agreement with the Division in the  
19          last two years, and the applicant did not meet his or her financial analysis and operating standards  
20          for the last 12 months that the agreement was in effect, the applicant shall complete refresher course  
21          training to assure qualified management.
- 22          (12) An applicant must have operated a Business Enterprises facility for twelve months prior to the cut-  
23          off date for calculating financial performance according to standards to be considered an operator,  
24          otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period  
25          ending with the last day of the same month in which the vacancy is advertised.
- 26          (13) If an operator who is not currently operating a Business Enterprises facility applies for a vacancy  
27          within 12 months of leaving a facility, the financial performance standards for the prior facility shall  
28          be used for subparagraph 3 of this Rule if the financial performance analysis was completed within  
29          the required three-year period.
- 30          (14) Financial analyses of facilities shall be completed every three years. The analysis shall be on the  
31          facility, not the operator; however, an operator may request a new analysis after at least nine months  
32          in the new facility.
- 33          (15) An applicant shall not sit on the Interview Committee for a location for which he or she is applying  
34          or if a member of his or her immediate family has applied for a vacant facility. Immediate family  
35          is defined as a spouse, parent, child, or sibling. This definition includes all step, half and in-law  
36          relationships. If a member of the Interview Committee is disqualified from serving as a result of this

1 rule, the Chair and Vice Chair shall jointly select a member of the ECBV to sit on the Interview  
 2 Committee.

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

7  
 8 *History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*  
 9 *Eff. October 1, 1978;*  
 10 *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*  
 11 *February 1, 1981;*  
 12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
 13 *23, 2015.*  
 14 *Readopted Eff. \_\_\_\_\_.*

15  
 16 **10A NCAC 63C .0403 PROCEDURE**

17 (a) The operator or licensee or the ECBV shall submit the grievance in writing to the Division and discuss the problem  
 18 with the Division staff person taking the action with which the operator or licensee or the ECBV is dissatisfied and  
 19 request specific action in writing to resolve the grievance. The written grievance and requested resolution shall be  
 20 submitted to the Division and the discussion shall be held within 15 business days of the occurrence of the action  
 21 challenged by the operator or licensee or the ECBV. The operator or licensee or the ECBV shall receive a response  
 22 within five business days following the discussion. Any decision made by agency personnel at this step shall be  
 23 subject to supervisory review and approval. If the grievance is not received within 15 business days of the occurrence  
 24 of the action challenged, the Division's action final.

25 (b) If the complaint is not resolved and the operator or licensee or the ECBV is not satisfied with the outcome of  
 26 Paragraph (a) of this Rule, he or she shall have 5 business days to ask for a review by the operator relations committee  
 27 in writing. Within five business days after asking for a review, the operator/licensee shall be notified of the date of  
 28 the hearing, which shall be held within 10 business days after the operator's/licensee's request for a hearing. The  
 29 committee shall render its decision within 5 business days after the hearing.

30 (c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator or licensee or the  
 31 ECBV or the Division staff person responsible for the initial action, the matter may be referred by the operator or  
 32 licensee or the ECBV or the Division staff person to the director of the Division. Any request for review shall be  
 33 submitted within 5 business days after the operator relations committee has presented its recommendation. The party  
 34 requesting the referral shall provide a copy of the decision from the operators relations committee and document the  
 35 specific action requested to resolve the grievance, copies of which shall be provided at the same time to all other  
 36 parties concerned. The director shall make the decision for the Division within 5 business days, and this decision shall  
 37 be announced immediately to all parties concerned.

- 1 (d) If the complaint is not resolved and the operator or licensee or the ECBV is not satisfied with steps of Paragraphs  
2 (a) through (c) of this Rule, then the operator or licensee or the ECBV may file a complaint with the Division  
3 requesting a full evidentiary hearing.
- 4 (e) If a blind operator or licensee or the ECBV requests a full evidentiary hearing, such request shall be made within  
5 15 business days after the director's adverse direction rendered through the procedures in this Rule.
- 6 (f) A blind operator or licensee or the ECBV shall request a full evidentiary hearing in writing. This request shall be  
7 transmitted to the director of the Division personally or electronically or by certified mail, return receipt requested,  
8 transmitted through the Elected Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall  
9 be held in accordance with G.S. 150B, Article 3, the extent that such article does not conflict with these Rules  
10 pertaining to grievance procedures or any federal law or regulation.
- 11 (g) A blind operator or licensee or the ECBV shall be entitled to legal counsel or other representation in a full  
12 evidentiary hearing.
- 13 (h) Reader services or other communication services shall be arranged for the blind operator or licensee or the ECBV  
14 if requested. Transportation costs and per diem shall be provided also to the blind operator or licensee or the ECBV  
15 during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence  
16 of the operator/licensee.
- 17 (i) The hearing shall be held at a time and place convenient and accessible to the blind operator or licensee or the  
18 ECBV requesting a full evidentiary hearing. The blind operator or licensee or the ECBV shall be entitled to have the  
19 hearing held in the county of his residence unless he waives this right. A hearing held during regular Division business  
20 hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division within 15 business  
21 days of its receipt of such a request, unless the Division and the blind operator or licensee or the ECBV mutually, in  
22 writing, agree to some other period of time. The Division shall notify the blind operator or licensee or the ECBV in  
23 writing of the time and place fixed for the hearing and of their right to be represented by legal or other counsel. The  
24 Division shall provide the blind operator or licensee or the ECBV a copy of the hearing procedures and other relevant  
25 information necessary to enable him to prepare his case for the hearing.
- 26 (j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human  
27 Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with  
28 the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard  
29 Business Enterprises Program.
- 30 (k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient  
31 record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding  
32 officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the  
33 conduct of the hearing.
- 34 (l) The blind operator or licensee or the ECBV operator/licensee and the Division shall be entitled to present their case  
35 by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination  
36 of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.

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.

4 (n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay  
 5 all transcript costs and shall provide the blind operator or licensee or the ECBV with at least one copy of the transcript.

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

8 (p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing,  
 9 and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and  
 10 conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any  
 11 remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 business days after  
 12 the receipt of the official transcript. The decision shall be mailed promptly to the blind operator or licensee or the  
 13 ECBV and the division.

14 (q) If the dispute(s) is not resolved to the satisfaction of a blind operator or licensee or the ECBV after provision of a  
 15 full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the  
 16 convening of an arbitration panel.

17 (r) The results of the arbitration shall be considered the final agency action and the operator or licensee or the ECBV  
 18 shall have exhausted his administrative remedies.

19  
 20 *History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*

21 *Eff. October 1, 1978;*

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

23 *December 1, 1981.*

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

## 25 26 27 SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

### 28 29 10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

30 (a) The Business Enterprises operator shall:

- 31 (1) perform duties to ensure the operation of the Business Enterprises facility in accordance with the  
 32 rules of the Commission for the Blind and standards issued pursuant thereto and the contractual  
 33 agreement between the Division and the operator, and the terms and conditions of the permit or  
 34 contract with the host facility;
- 35 (2) operate the facility in accordance with all applicable health laws and Rules;
- 36 (3) purchase, merchandise, price goods for sale, purchase supplies for the facility and control inventory  
 37 in the Business Enterprises facility;

**Speight, Cynthia**

---

**From:** Speight, Cynthia  
**Sent:** Monday, March 26, 2018 10:09 AM  
**To:** mreller47@gmail.com; Gerald Fisher (geraldfisher@gmail.com);  
 vernoncox@bellsouth.net; 'steven shores'; Benita Campbell; Tim Jones (tmjnc2@gmail.com); easyvend@bellsouth.net; t49@mindspring.com; 'Chris'  
**Cc:** Webb, William; Trotter, Kathie; Myers, Tara  
**Subject:** SLA Proposed Rule Revision  
**Attachments:** SUBCHAPTER 63C 3 26 18 63C .0204.docx

**Importance:** High

Good Morning,

Per you feedback below, rule .0204 has revised. Please send any remaining comments by COB March 28<sup>th</sup>. Thank you.

**Cynthia Speight, MS**

Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

(919) 527-6704 Office  
 (919) 733-9769 Fax  
[Cynthia.Speight@dhhs.nc.gov](mailto:Cynthia.Speight@dhhs.nc.gov)

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**From:** Ron Eller [mailto:mreller47@gmail.com]  
**Sent:** Sunday, March 18, 2018 9:59 AM  
**To:** Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia <cynthia.speight@dhhs.nc.gov>  
**Subject:** [External] Fwd: motion

**CAUTION:** External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Mr. Webb,

The ECBV met March 15th at 3pm and the following motions were made and passed unanimously.

Motion: \$200,000.00 of set aside funds be rebated to all operators.

Motion: That Transfer and promotion process be changed to Seniority and performance for posted locations. This should replace the rule for filling vacancies.

Please see attached motion on rules.

Ron Eller  
Chair, ECBV

## SUBCHAPTER 63C - BUSINESS ENTERPRISES PROGRAM

## 10A NCAC 63C .0204 FILLING OF VACANCIES

- (a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.
- (b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.
- (c) Transfers and promotions shall be based on the following procedures: seniority and performance for posted locations.
- (1) ~~The Division shall send a notice of available facilities to all operators and licensees on the last 10 working day of the month. The notice shall provide a description of the vacancy and who to contact for more information.~~
  - (2) ~~All applications shall be post-marked by the 10th of the month following the notice and mailed to the office of the Chief of Business Enterprises.~~
  - (3) ~~The Interview Committee shall interview all applicants on the second Friday of the month which follows the application deadline.~~
  - (4) ~~At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant shall have five working days to review the point total and request any adjustments.~~
  - (5) ~~After adding together the points from the sanitation, seniority, Financial Analysis/Operating 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.~~

- 1 (8) — If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the  
2 last two years, and the applicant did not meet his financial analysis and operating standards for the  
3 last 12 months that his agreement was in effect, the applicant shall repeat the necessary on-the-job-  
4 training. The Interview Committee may also recommend refresher course training to assure qualified  
5 management.
- 6 (9) — Licensees/operators not selected may file an administrative appeal as provided for in Subchapter  
7 63C Section .0400. The fifteen day limit to file an appeal shall begin from the date the  
8 licensee/operator is informed by telephone of the results of the award.
- 9 (10) — An applicant must have operated a Business Enterprises location for six months prior to the cut-off  
10 date for calculating financial performance according to standards to be considered an operator,  
11 otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period  
12 ending with the last day of the same month in which the vacancy is advertised.
- 13 (11) — If an operator leaves the Business Enterprises Program and then applies for a location within 12  
14 months of leaving, his financial performance according to standards for the 12 months prior to his  
15 leaving shall be used to calculate points in the Financial Performance Section.
- 16 (12) — Financial analyses of facilities shall be done every two years. The analysis shall be on the facility  
17 not the operator; however, an operator may request a new analysis after at least four months in the  
18 new facility. If an applicant's financial analysis is less than two years old and the applicant's  
19 performance is neither above 100 percent nor below 85 percent on either measure, the financial  
20 analysis is current.
- 21 (13) — An applicant who does not hold the required level of license for the vacancy may be awarded the  
22 facility contingent upon successfully completing the required training. Applicants who hold the  
23 required level of license but have not operated a facility at that level for at least two years shall  
24 complete refresher on the job training if the applicant did not meet his financial analysis and  
25 operating standards for the last 12 months that his agreement was in effect.
- 26 (14) — An operator may not sit on the Interview Committee for a location for which he/she is applying or  
27 if a member of his/her immediate family has applied for a vacant facility. For this purpose  
28 immediate family is defined as spouse, parent, child, brother and sister. Also included are the step,  
29 half and in-law relationships. If the Vice Chairman and the Chairman of the Elected Committee of  
30 Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from  
31 sitting on the Interview Committee under this Rule, those three must pick another Elected  
32 Committee of Vendors member to sit on the Interview Committee.
- 33 (15) — The schedule for awarding vacancies may be changed to accommodate holidays, too many  
34 applications to process in one day, or at any time necessary due to program conflicts as determined  
35 by the chief of Business Enterprises and the Vice Chairman of the Elected Committee of Vendors.  
36 All applicants shall be notified in writing of the date, time and place of their interview.

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

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

6           (1) — Sanitation:

7           (A) — Ten point maximum;

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

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

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

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

18          (2) — Seniority:

19          (A) — Five point maximum;

20          (B) — Seniority points shall be awarded as follows:

21                   Years in Business Enterprises Program — Points

22                               0 to 4.99 — 0 points

23                               5 to 9.99 — 1 point

24                               10 to 14.99 — 2 points

25                               15 to 19.99 — 3 points

26                               20 to 24.99 — 4 points

27                               25 and over — 5 points

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

34          (3) — Performance According to Financial Analysis/Operating Standards: Operating standards are  
 35           determined by tabulating all the invoices for purchases for resale for each facility for a period of  
 36           three months. The optimum sales and gross profit percentage is determined by computing the  
 37           maximum potential for sales and gross profit without consideration for theft, waste or poor

1 management. Each operator is required to maintain 85 percent of the optimum standard established  
 2 for each facility for sales and gross profit. Eighty-five percent of the optimum sales and gross profit  
 3 percentage is considered the operating standard for each facility.

4 (A) — 50 Points Maximum;

5 (B) — Applicants shall receive 20 points for meeting or exceeding 85 percent of their sales  
 6 standard;

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

9 (D) — Applicants shall receive five points for meeting or exceeding 92.5 percent of their sales  
 10 optimum;

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

13 (4) — Customer and Building Management Relations:

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

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

20 (5) — Oral Exam/Interview:

21 (A) — 30 points maximum.

22 (B) — Interview shall be face to face (no conference calls).

23 (C) — All applicants shall be interviewed.

24 (D) — The Interview Committee shall consist of:

25 (i) — The Chief of Business Enterprises, or Deputy Chief or Assistant Director of  
 26 Programs and Facilities as designated by Chief,

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

29 (iii) — The Vice Chairman of the Elected Committee of Vendors or the Chairman in his  
 30 absence, or in the absence of the Chairman, the Chairman of the Transfer and  
 31 Promotion subcommittee.

32 (E) — The Oral Exam part shall consist of 10 questions drawn either from a pool of standard  
 33 questions or developed by the Interview Committee prior to the interview. The oral exam  
 34 questions shall relate to any special needs of the vacant facility as well as to standard  
 35 responsibilities and knowledge areas of Business Enterprises operators. Each member of  
 36 the Interview Committee shall evaluate the applicant's response to each question in the oral  
 37 exam. The applicant shall receive one point by demonstrating basic knowledge, the

1 applicant shall receive one and one-half points for demonstrating above average  
 2 knowledge, and the applicant shall be awarded two points for demonstrating exceptional  
 3 knowledge for each interview question. There shall be at least one question involving a  
 4 calculation and a talking calculator shall be provided, although applicants may bring their  
 5 own. The oral exam shall yield a possible 20 points.

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

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

24 (6) Licensees and trainees:

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

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

35 (C) Applicants shall have satisfactorily completed Level I training or have a Level I license to  
 36 be interviewed. The four levels of Business Enterprises facilities are defined as follows:  
 37 Level I has no cooking or on-site food preparation and includes only service via vending

1                    machines or over the counter service including snacks, candy, pre-packaged sandwiches,  
2                    coffee, and assorted beverages. Level II service is similar to a deli operation where hot  
3                    and cold food is prepared on site. Level III service includes all of the above with the  
4                    addition of a grill and fryer. Level IV service consists of full-service cafeteria style  
5                    facilities. An applicant shall score at least 60 total points to be awarded a location. If the  
6                    applicant scores at least 55 points but less than 60 points, the interview panel may make a  
7                    conditional award if the panel agrees it is in the best interest of the Business Enterprises  
8                    Program.

9  
10    *History Note:*    *Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*  
11                    *Eff. October 1, 1978;*  
12                    *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*  
13                    *February 1, 1981;*  
14                    *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
15                    *23, 2015.*  
16                    *Readopted Eff. \_\_\_\_\_.*  
17

**Speight, Cynthia**

---

**From:** Speight, Cynthia  
**Sent:** Wednesday, March 7, 2018 6:06 PM  
**To:** steven shores; Chris; Ron Eller; Gerald Fisher (geraldfisher@gmail.com);  
 vernoncox@bellsouth.net; Tim Jones (tmjnc2@gmail.com); t49@mindspring.com;  
 'bgcamp@ec.rr.com'; easyvend@bellsouth.net  
**Cc:** Webb, William; Myers, Tara  
**Subject:** Proposed Rules Revisions  
**Attachments:** SUBCHAPTER 63C.docx

Good Afternoon,

Please find attached the third draft of BEP rules revisions proposed by the SLA for your review and input. Thank you.

Cynthia Speight, MS  
 Director  
 Division of Services for the Blind  
 North Carolina Department of Health and Human Services

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-----Original Message-----

From: steven shores [mailto:shores.cafe@gmail.com]

Sent: Thursday, March 01, 2018 11:57 AM

To: Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia <cynthia.speight@dhhs.nc.gov>

Cc: Chris <ccarriola@aol.com>; Ron Eller <mreller47@gmail.com>; Steven Shores <shores.cafe@gmail.com>

Subject: [External] 3rd draft of 500's

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam.<mailto:report.spam@nc.gov>

March 1, 2018

To Whom It May Concern

This is the 3rd draft proposal of the 63c section 500's Please send your final completed formatted rule file which the Division is submitting to the Commission For The Blind by the close of the day March 7, 2018.

Thanks

Chris A.

Ron E.

Steven S.

ECBV Rules Committee

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

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

19  
 20 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*  
 21 *Eff. October 1, 1978;*  
 22 *Amended Eff. August 1, 2002; February 1, 1986.*  
 23 *Readopted Eff. \_\_\_\_\_.*  
 24

#### 25 **10A NCAC 63C .0204 FILLING OF VACANCIES**

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

- 28           (1) The Division shall send a notice of available facilities to all operators and licensees. The notice  
 29           shall provide a description of the vacancy, who to contact for more information and the deadline for  
 30           receipt of application.  
 31           (2) Applicants must not owe any money to the Business Enterprises Program to be eligible to apply for  
 32           vacancies.  
 33           (3) Applicants with three or more substantiated host complaints within a three-year period shall not be  
 34           eligible to apply for a vacancy.  
 35           (4) All applications shall be received by the Division no later than the deadline date identified in the  
 36           notice. If not received by the Division by the deadline, the applicant shall be ineligible to interview  
 37           for the vacancy.

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

- 3 (1) ~~the chief of the Business Enterprises Program or his or her designee;~~
- 4 (2) ~~an area rehabilitation supervisor or BEP representative;~~
- 5 (3) ~~the vice-chair of the Elected Committee of Blind Vendors or ECBV designee; and~~
- 6 (4) ~~the chair of the transfer and promotion committee or ECBV designee.~~

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

- 11 (1) ~~The Division shall send a notice of available facilities to all operators and licenses on the last 10~~  
 12 ~~working day of the month. The notice shall provide a description of the vacancy and who to contact~~  
 13 ~~for more information.~~
- 14 (2) ~~All applications shall be post-marked by the 10th of the month following the notice and mailed to~~  
 15 ~~the office of the Chief of Business Enterprises.~~
- 16 (3) ~~The Interview Committee shall interview all applicants on the second Friday of the month which~~  
 17 ~~follows the application deadline.~~
- 18 (4) ~~At least 10 working days prior to the interview, the Business Enterprises Counselor who works with~~  
 19 ~~the applicant shall calculate the applicant's points for sanitation, seniority, Financial~~  
 20 ~~Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant~~  
 21 ~~of his point total. The applicant shall have five working days to review the point total and request~~  
 22 ~~any adjustments.~~
- 23 (5) ~~After adding together the points from the sanitation, seniority, Financial Analysis/Operating~~  
 24 ~~Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3),~~  
 25 ~~(4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above~~  
 26 ~~60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to~~  
 27 ~~accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on.~~  
 28 ~~In the case of an exact tie, the applicant with the most time in the Business Enterprises Program~~  
 29 ~~shall be awarded the location.~~
- 30 (6) ~~Applicants shall be notified as soon as possible after their interview whether or not they have been~~  
 31 ~~awarded a location. This notification shall be by telephone and followed up in writing.~~
- 32 (7) ~~Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division~~  
 33 ~~shall agree to a different time frame if adhering to the 30-day time frame would cause a hardship to~~  
 34 ~~the applicant awarded the facility. The location shall not be filled for 15 working days following~~  
 35 ~~the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall~~  
 36 ~~not be filled until the appeal is resolved. If there is only one applicant for a location, the 15-day~~  
 37 ~~waiting period shall not apply.~~

- 1           (8) ~~If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the~~  
2           ~~last two years, and the applicant did not meet his financial analysis and operating standards for the~~  
3           ~~last 12 months that his agreement was in effect, the applicant shall repeat the necessary on-the-job~~  
4           ~~training. The Interview Committee may also recommend refresher course training to assure qualified~~  
5           ~~management.~~
- 6           (9) ~~Licensees/operators not selected may file an administrative appeal as provided for in Subchapter~~  
7           ~~63C Section .0400. The fifteen-day limit to file an appeal shall begin from the date the~~  
8           ~~licensee/operator is informed by telephone of the results of the award.~~
- 9           (10) ~~An applicant must have operated a Business Enterprises location for six months prior to the cut-off~~  
10           ~~date for calculating financial performance according to standards to be considered an operator,~~  
11           ~~otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period~~  
12           ~~ending with the last day of the same month in which the vacancy is advertised.~~
- 13           (11) ~~If an operator leaves the Business Enterprises Program and then applies for a location within 12~~  
14           ~~months of leaving, his financial performance according to standards for the 12 months prior to his~~  
15           ~~leaving shall be used to calculate points in the Financial Performance Section.~~
- 16           (12) ~~Financial analyses of facilities shall be done every two years. The analysis shall be on the facility~~  
17           ~~not the operator; however, an operator may request a new analysis after at least four months in the~~  
18           ~~new facility. If an applicant's financial analysis is less than two years old and the applicant's~~  
19           ~~performance is neither above 100 percent nor below 85 percent on either measure, the financial~~  
20           ~~analysis is current.~~
- 21           (13) ~~An applicant who does not hold the required level of license for the vacancy may be awarded the~~  
22           ~~facility contingent upon successfully completing the required training. Applicants who hold the~~  
23           ~~required level of license but have not operated a facility at that level for at least two years shall~~  
24           ~~complete refresher on-the-job training if the applicant did not meet his financial analysis and~~  
25           ~~operating standards for the last 12 months that his agreement was in effect.~~
- 26           (14) ~~An operator may not sit on the Interview Committee for a location for which he/she is applying or~~  
27           ~~if a member of his/her immediate family has applied for a vacant facility. For this purpose~~  
28           ~~immediate family is defined as spouse, parent, child, brother and sister. Also included are the step,~~  
29           ~~half and in-law relationships. If the Vice-Chairman and the Chairman of the Elected Committee of~~  
30           ~~Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from~~  
31           ~~sitting on the Interview Committee under this Rule, those three must pick another Elected~~  
32           ~~Committee of Vendors member to sit on the Interview Committee.~~
- 33           (15) ~~The schedule for awarding vacancies may be changed to accommodate holidays, too many~~  
34           ~~applications to process in one day, or at any time necessary due to program conflicts as determined~~  
35           ~~by the chief of Business Enterprises and the Vice-Chairman of the Elected Committee of Vendors.~~  
36           ~~All applicants shall be notified in writing of the date, time and place of their interview.~~

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

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

6           (1) Sanitation:

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

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

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

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

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

18           (2) Seniority:

19           (A) Five points maximum;

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

21           Years in Business Enterprises Program – Points

22                       0 to 4.99 - 0 points

23                       5 to 9.99 - 1 point

24                       10 to 14.99 - 2 points

25                       15 to 19.99 - 3 points

26                       20 to 24.99 - 4 points

27                       25 and over - 5 points

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

34           (3) Performance ~~A~~ According to Financial Analysis and Operating Standards: ~~Operating standards~~  
 35           ~~are determined by tabulating all the invoices for purchases for resale for each facility for a period of~~  
 36           ~~three months. The optimum sales and gross profit percentage is determined by computing the~~  
 37           ~~maximum potential for sales and gross profit without consideration for theft, waste or poor~~

1 management. ~~require~~ Each operator is required to maintain 85 percent of the optimum standard  
 2 established for each facility for sales and gross profit. Eighty-five percent of the optimum sales and  
 3 gross profit percentage is considered the operating standard for each facility.

- 4 (A) 50 Points Maximum;
- 5 (B) Applicants shall receive ~~20~~ 15 points for meeting or exceeding 85 percent of their sales  
 6 standard;
- 7 (C) Applicants shall receive ~~20~~ 15 points for meeting or exceeding 85 percent of their gross  
 8 profit percentage standard;
- 9 (D) Applicants shall receive five points for meeting or exceeding ~~92.5~~ 90 percent of their sales  
 10 optimum;
- 11 (E) Applicants shall receive five points for meeting or exceeding ~~92.5~~ 90 percent of their gross  
 12 profit percentage optimum.
- 13 (F) Applicants shall receive five points for meeting or exceeding 95.01 percent of their sales  
 14 optimum; and
- 15 (G) Applicants shall receive five points for meeting or exceeding 95.01 percent of their gross  
 16 profit percentage optimum.

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

- 18 (A) ~~Five points shall be deducted for each written site management complaint in the past two~~  
 19 ~~years, up to a maximum of 10 points.~~
- 20 (B) ~~If the applicant has more than three written site management complaints, he shall not be~~  
 21 ~~considered for the award. No site management complaint that is more than three years old~~  
 22 ~~may be used against an operator. Site management is defined as the property official for~~  
 23 ~~the property on which a BEP facility is located.~~

24 ~~(5)~~(4) Oral Exam/Interview:

- 25 (A) ~~340~~ 300 points maximum.
- 26 (B) Interview shall be face to face (~~no conference calls~~). A conference call shall not be  
 27 considered face-to-face.
- 28 (C) ~~All~~ Each applicants shall ~~be interviewed~~ shall complete the interview process to be  
 29 considered for award of the facility.
- 30 (D) ~~The Interview Committee shall consist of:~~
- 31 (i) ~~The Chief of Business Enterprises, or Deputy Chief or Assistant Director of~~  
 32 ~~Programs and Facilities as designated by Chief,~~
- 33 (ii) ~~The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the~~  
 34 ~~vacancy occurs, and~~
- 35 (iii) ~~The Vice Chairman of the Elected Committee of Vendors or the Chairman in his~~  
 36 ~~absence, or in the absence of the Chairman, the Chairman of the Transfer and~~  
 37 ~~Promotion subcommittee.~~

1 (E) The Oral Exam part shall consist of 10 - 20 questions drawn either from a pool of standard  
 2 questions or developed by the Interview Committee prior to the interview. The oral exam  
 3 questions shall relate to any special needs of the vacant facility as well as to standard  
 4 responsibilities and knowledge areas of Business Enterprises operators. Each member of  
 5 the Interview Committee shall evaluate the applicant's response to each question in the oral  
 6 exam. The applicant shall receive one point by demonstrating basic knowledge, the  
 7 applicant shall receive one and one-half points for demonstrating above average  
 8 knowledge, and the applicant shall be awarded two points for demonstrating exceptional  
 9 knowledge for each interview question. There shall be at least one question involving a  
 10 calculation and a talking calculator shall be provided, although applicants may bring their  
 11 own. The oral exam shall yield a possible 20 points. There shall be at least two math  
 12 questions; at least one calculating math question. The Interview Committee shall also  
 13 develop desired answers for the interview questions prior to the interview.

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

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

32 (6)(5) Licensees and trainees:

33 (A) A licensee who has no previous experience in the North Carolina Business Enterprises  
 34 Program shall be assigned 35 40 points in the Financial Analysis/Operating Standards  
 35 category. If the licensee's current scores 90 percent or above on the National Restaurant  
 36 Association's ServSafe exam is 90 percent or greater, he/she an additional shall be awarded  
 37 three points shall be added in the sanitation category.

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

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

17 (6) An operator who is currently managing a Business Enterprises military dining facility shall be  
18 assigned 50 points in subparagraph 3 plus any seniority points.

19 (7) After calculating the point total of this Rule for each applicant, the applicant with the highest point  
20 total shall be awarded the vacancy. If the applicant with the highest point total declines to accept  
21 the location, it shall be offered to the applicant with the next highest point total and so on. In the  
22 case of an exact tie, the seniority points of the two applicants will be deducted and the total points  
23 recalculated. The applicant with the recalculated highest points shall be awarded the location.

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

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

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

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

36 (12) An applicant must have operated a Business Enterprises facility for twelve months prior to the cut-  
37 off date for calculating financial performance according to standards to be considered an operator.

1 otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period  
 2 ending with the last day of the same month in which the vacancy is advertised.

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

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

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

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

20  
 21 *History Note: Authority G.S. 111-27; 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 *Readopted Eff. \_\_\_\_\_.*  
 28

29 **10A NCAC 63C .0205 CONTRACTUAL AGREEMENT BETWEEN DIVISION AND OPERATOR**

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

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

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

- 36 (1) ~~the~~ responsibilities of the licensed operator as contained in the rules in this Subchapter;  
 37 (2) ~~the~~ responsibilities of the Division as contained in the rules in this Subchapter;

1                   *Eff. October 1, 1978;*  
 2                   *Amended Eff. August 1, 2002;*  
 3                   *Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.*  
 4

5                   **SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE**  
 6

7                   **10A NCAC 63C .0401    PURPOSE**

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

11  
 12                  *History Note:    Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107;*  
 13                                   *Eff. October 1, 1978;*  
 14                                   *Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984.*  
 15                                   *Readopted Eff. \_\_\_\_\_.*  
 16

17                  **10A NCAC 63C .0402    POLICY**

- 18                  (a) Every operator/ or licensee or the ECBV has the right to present a problem or appeal free from interference,  
 19                  restraint, coercion, discrimination, or reprisal. This ~~policy~~rule shall be covered fully during orientation procedures for  
 20                  new operators/ or licensees.  
 21                  (b) When presenting an appeal, an operator/ or licensee or the ECBV may be accompanied by a person or persons of  
 22                  his or her choice.  
 23                  (c) The filing of a complaint with the Division shall indicate consent by the blind operator/ or licensee or the ECBV  
 24                  for the release of such information as is necessary for the conduct of the administrative appeal.

25  
 26                  *History Note:    Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec 107;*  
 27                                   *Eff. October 1, 1978;*  
 28                                   *Amended Eff. February 1, 1984, February 1, 1981;*  
 29                                   *Recodified Paragraph (f) to Rule .0212 Eff. May 30, 1984;*  
 30                                   *Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1986.*  
 31                                   *Readopted Eff. \_\_\_\_\_.*  
 32

33                  **10A NCAC 63C .0403    PROCEDURE**

- 34                  (a) The operator/ or licensee or the ECBV shall submit the grievance in writing to the Division and discuss the problem  
 35                  with the Division staff person taking the action with which the operator or licensee or the ECBV is dissatisfied and  
 36                  request specific action in writing to resolve the grievance. These written grievance and requested resolution shall be  
 37                  submitted to the Division and the discussion shall be held within 15 working business days of the occurrence of the

1 action challenged by the operator or licensee or the ECBV. The operator/ or licensee or the ECBV shall receive a  
2 response within five working days following the discussion. Any decision made by agency personnel at this step shall  
3 be subject to supervisory review and approval. If the grievance is not received within 15 business days of the  
4 occurrence of the action challenged, the grievance will be invalid and the Division's action final.

5 (b) If the complaint is not resolved and the operator/ or licensee or the ECBV is not satisfied with the outcome of  
6 Paragraph (a) of this Rule, he or she shall have ~~45~~ working business days to ask for a review by the operator relations  
7 committee in writing. Within five ~~workingbusiness~~ workingbusiness days after asking for a review, the operator/licensee shall be  
8 notified of the date of the hearing, which shall be held within ~~25~~ 10 workingbusiness days after the operator's/licensee's  
9 request for a hearing. The committee shall render its decision within ~~20~~ 5 working business days after the hearing.

10 (c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator/ or licensee or the  
11 ECBV or the Division staff person responsible for the initial action, the matter may be referred by the operator/ or  
12 licensee or the ECBV or the Division staff person to the director of the Division. Any request for review shall be  
13 submitted within ~~45~~ working business days after the operator relations committee has presented its recommendation.  
14 The party requesting the referral shall provide a ~~written summary of the specific facts of the complaint~~ copy of the  
15 decision from the operators relations committee and document the request for specific action requested to resolve the  
16 grievance, copies of which shall be provided at the same time to all other parties concerned. The director shall make  
17 the decision for the Division within ~~45~~ workingbusiness days, and ~~his~~ this decision shall be announced immediately to  
18 all parties concerned.

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

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

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

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

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

- 1 (i) The hearing shall be held at a time and place convenient and accessible to the blind operator/or licensee or the  
2 ECBV requesting a full evidentiary hearing. The blind operator/or licensee or the ECBV shall be entitled to have the  
3 hearing held in the county of his residence unless he waives this right. A hearing held during regular Division  
4 workingbusiness hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division  
5 within 15 workingbusiness days of its receipt of such a request, unless the Division and the blind operator/or licensee  
6 or the ECBV mutually, in writing, agree to some other period of time. The Division shall notify the blind operator/  
7 or licensee or the ECBV in writing of the time and place fixed for the hearing and of ~~his~~their right to be represented  
8 by legal or other counsel. The Division shall provide the blind operator/or licensee or the ECBV a copy of the hearing  
9 procedures and other relevant information necessary to enable him to prepare his case for the hearing.
- 10 (j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human  
11 Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with  
12 the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard  
13 Business Enterprises Program.
- 14 (k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient  
15 record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding  
16 officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the  
17 conduct of the hearing.
- 18 (l) ~~Both~~The blind operator/or licensee or the ECBV operator/licensee and the Division shall be entitled to present  
19 their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and  
20 cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.
- 21 (m) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and  
22 provided to the other party. All such documents and other evidence submitted shall be open to examination by the  
23 parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.
- 24 (n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay  
25 all transcript costs and shall provide the blind operator/or licensee or the ECBV with at least one copy of the transcript.
- 26 (o) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the  
27 exclusive record for decision.
- 28 (p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing,  
29 and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and  
30 conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any  
31 remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 workingbusiness  
32 days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/or licensee  
33 or the ECBV and the division.
- 34 (q) If the dispute(s) is not resolved to the satisfaction of a blind operator/or licensee or the ECBV after provision of  
35 a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the  
36 convening of an arbitration panel.

1 (r) The results of the arbitration shall be considered the final agency action and the operator/ or licensee or the ECBV  
 2 shall have exhausted his administrative remedies.

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

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

13 **10A NCAC 63C .0501 ELECTION**

14 ~~The Division shall provide for biennial election among the operators in the program to elect a state committee of blind~~  
 15 ~~operators called the Elected Committee of Vendors. This Elected Committee of Vendors shall be representative of~~  
 16 ~~operators on the basis of geography and shall be proportionally representative of operators on federal property. The~~  
 17 ~~Elected Committee of Vendors shall consist of representatives from the four geographical regions and one region~~  
 18 ~~comprised of all Federal facilities.~~

19  
 20 *History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107;*  
 21 *Eff. October 1, 1978;*  
 22 *Amended Eff. August 1, 2002; May 1, 1996; February 1, 1986.*  
 23 *Expired Eff. \_\_\_\_\_.*

25 **10A NCAC 63C .0502 COMMITTEE SIZE**

26 **10A NCAC 63C .0503 NOMINATIONS AND ELECTIONS**

27 **10A NCAC 63C .0504 TERM OF MEMBERSHIP**

28 **10A NCAC 63C .0505 CONSECUTIVE TERMS**

29  
 30 *History Note: Authority G.S. 111-13; 111-27; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended;*  
 31 *Eff. October 1, 1978;*  
 32 *Amended Eff. August 1, 2002; April 1, 1990; July 1, 1987; June 1, 1983;*  
 33 *Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.*

35 **10A NCAC 63C .0506 ORGANIZATION AND OPERATION**

36 (a) ~~The officers of the Elected Committee of Vendors shall be a chairman and a vice chairman. They shall be elected~~  
 37 ~~by the Elected Committee of Vendors from among Elected Committee of Vendors members. The Division shall~~

**Speight, Cynthia**

---

**From:** Speight, Cynthia  
**Sent:** Thursday, September 13, 2018 10:46 PM  
**To:** Speight, Cynthia  
**Subject:** FW: [External] response  
**Attachments:** march 8th response.docx

Cynthia Speight, MS  
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-----Original Message-----

From: steven shores <shores.cafe@gmail.com>  
 Sent: Thursday, March 08, 2018 8:56 AM  
 To: Webb, William <william.webb@dhhs.nc.gov>; Speight, Cynthia <cynthia.speight@dhhs.nc.gov>  
 Cc: Chris <ccarriola@aol.com>; Ron Eller <mreller47@gmail.com>; steven shores <shores.cafe@gmail.com>  
 Subject: [External] response

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam.<mailto:report.spam@nc.gov>

March 8, 2018

To Whom It May Concern

There are still several issues we have with the proposed Division's changes to 10A NCAC sub chapter 63C.

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

( c ) what if an operator already owns the stock and petty cash?then what?

10A NCAC 63C .0104 TRAINING PROGRAM  
 What about licensees?

March 8, 2018

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What about licensees?

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

(6) Guns laws?

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

Questions should be Objective

(E) The Oral Exam part shall consist of 10 - 20 (objective) questions drawn either from a

**10A ncac 63c .0205 CONTRACTUAL AGREEMENT BETWEEN DIVISION AND OPERATOR**

needs word additions or rewording

- (7) the agreement shall terminate upon the Division closing of a facility which the Division, (?) ECBV active participation, has determined offers no possibility of being profitable.

#### 10A NCAC 63C .0403 PROCEDURE

RSA will not agree to this type of language nor do we. Remove language [ ]

- (a) . . . personnel at this step shall be subject to supervisory review and approval.\*\*\* [If the grievance is not received within 15 business days of the occurrence of the action challenged, the grievance will be invalid and the Division's action final.]\*\*\*

#### 10A NCAC 63C .0506 ORGANIZATION AND OPERATION

(there are only four geographic regions and 1 federal region)

- (b) The ECBV membership shall be composed of operators who represent all operators in the Business Enterprises Program, as elected based on the [five](four) geographic regions and the one federal region which

Typing mistake

- (h) The ECBV chair shall serve as a non-\*\*\*[voiting] ex-officio member of all subcommittees. The ECBV shall

Unless this a federal or state law it cannot be Mandated – discrimination!

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

#### 10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

Necessity? As well as too subjective!

- (8) open a commercial business account in which sufficient funds are maintained to operate the Business Enterprises facility;

RSA will not allow this mandated rule as written – so?

Individuals licensed after 2016 may apply

(9) submit an electronic profit and loss report (D-sheet) to the Division by the 15<sup>th</sup> of the month following the reporting month;

(business consultation?

(12) provide all records for the assigned facility to the Division upon request for the purpose of

Obsolete delete

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

This list is not complete and additional remarks will be forth coming.

Chris A.

Ron E.

Steven S.

ECBV Rules Committee