

RRC STAFF OPINION

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

AGENCY: Commission for the Blind
RULE CITATION: 10A NCAC 63C .0204
RECOMMENDED ACTION:

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

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

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

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

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

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

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

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

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

Jason Thomas
Commission Counsel
Issued June 7, 2018

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above~~
2 ~~60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to~~
3 ~~accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on.~~
4 ~~In the case of an exact tie, the applicant with the most time in the Business Enterprises Program~~
5 ~~shall be awarded the location.~~

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

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

14 ~~(8) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the~~
15 ~~last two years, and the applicant did not meet his financial analysis and operating standards for the~~
16 ~~last 12 months that his agreement was in effect, the applicant shall repeat the necessary on the job~~
17 ~~training. The Interview Committee may also recommend refresher course training to assure qualified~~
18 ~~management.~~

19 ~~(9) Licensees/operators not selected may file an administrative appeal as provided for in Subchapter~~
20 ~~63C Section .0400. The fifteen day limit to file an appeal shall begin from the date the~~
21 ~~licensee/operator is informed by telephone of the results of the award.~~

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

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

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

34 ~~(13) An applicant who does not hold the required level of license for the vacancy may be awarded the~~
35 ~~facility contingent upon successfully completing the required training. Applicants who hold the~~
36 ~~required level of license but have not operated a facility at that level for at least two years shall~~

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

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

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

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

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

19 (1) Sanitation:

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

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

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

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

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

31 (2) Seniority:

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

18 (A) 50 Points Maximum;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36
37 *History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;*

1 *Eff. October 1, 1978;*
2 *Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986;*
3 *February 1, 1981;*
4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
5 *23, ~~2015~~ 2015;*
6 *Amended Eff._____.*

RRC STAFF OPINION

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

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0403

RECOMMENDED ACTION:

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

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

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

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

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

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

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

* * * * *

Jason Thomas
Commission Counsel
Issued June 7, 2018

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

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

Jason Thomas
Commission Counsel
Issued June 7, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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. shall be held at a time and place convenient and accessible to the blind operator or
14 licensee or the ECBV requesting a full evidentiary hearing. The blind operator or licensee or the ECBV shall be
15 entitled to have the hearing held in the county of his or her residence unless he or she waives this right. A hearing
16 held during regular Division business hours shall be deemed among the convenient times. The hearing shall be
17 scheduled by the Division within 15 business days of its receipt of such a request, unless the Division and the blind
18 operator or licensee or the ECBV mutually, in writing, agree to some other period of time. The Division shall notify
19 the blind operator or licensee or the ECBV in writing of the time and place fixed for the hearing and of their right to
20 be represented by legal or other counsel. The Division shall provide the blind operator or licensee or the ECBV a copy
21 of the hearing procedures and other relevant information necessary to enable him or her to prepare his or her case for
22 the hearing.

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

37

- 1 (m) ~~All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and~~
2 ~~provided to the other party. All such documents and other evidence submitted shall be open to examination by the~~
3 ~~parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues. The blind~~
4 ~~operator or licensee or the ECBV and the Division shall be entitled to present their case by oral or documentary~~
5 ~~evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be~~
6 ~~required for a full and true disclosure of all facts bearing on the issue.~~
- 7 (n) ~~A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay~~
8 ~~all transcript costs and shall provide the blind operator/ licensee operator or licensee or the ECBV with at least one~~
9 ~~copy of the transcript. All papers and documents introduced into evidence at the hearing shall be filed with the~~
10 ~~presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to~~
11 ~~examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of~~
12 ~~the issues.~~
- 13 (o) ~~The A transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the~~
14 ~~exclusive record for decision. be made of the oral evidence and shall be made available to the parties. The Division~~
15 ~~shall pay all transcript costs and shall provide the blind operator or licensee or the ECBV with at least one copy of the~~
16 ~~transcript.~~
- 17 (p) ~~The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing,~~
18 ~~and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and~~
19 ~~conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any~~
20 ~~remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working business~~
21 ~~days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/ licensee~~
22 ~~operator or licensee or the ECBV and the division. transcript of testimony, exhibits, and all papers and documents~~
23 ~~filed in the hearing shall constitute the exclusive record for decision.~~
- 24 (q) ~~If the dispute(s) is not resolved to the satisfaction of a blind operator/ licensee operator or licensee or the ECBV~~
25 ~~after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of~~
26 ~~Education for the convening of an arbitration panel. The decision of the presiding officer shall set forth the principal~~
27 ~~issues and relevant facts adduced at the hearing, and the applicable provisions in law, federal regulations, and state~~
28 ~~rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis~~
29 ~~therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision~~
30 ~~shall be made within 15 business days after the receipt of the official transcript. The decision shall be mailed promptly~~
31 ~~to the blind operator or licensee or the ECBV and the division.~~
- 32 (r) ~~The results of the arbitration shall be considered the final agency action and the operator/ licensee operator or~~
33 ~~licensee or the ECBV shall have exhausted his administrative remedies. If the dispute(s) is not resolved to the~~
34 ~~satisfaction of a blind operator or licensee or the ECBV after provision of a full evidentiary hearing, an appeal may~~
35 ~~be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.~~
- 36 (s) ~~The decision of the arbitration panel shall be subject to appeal and review as a final agency action for the purposes~~
37 ~~of 5 U.S.C. Chapter 7.~~

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