

10A NCAC 63C .0204 FILLING OF VACANCIES

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

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

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

- (1) the individual has a repayment plan in place to repay the money he or she owes and is in compliance with that repayment plan; or
- (2) there is a pending grievance as set forth in Section .0400 in this Chapter.

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

(e) Operators and licensees who wish to apply for any vacancy shall submit an application to the address contained in the notice or to office of the Chief of Business Enterprises via electronic mail, personal delivery, the United States Postal Service, or commercial delivery services.

(f) The application shall include the applicant's name, address, telephone number, the name of the current BEP facility assigned to the applicant if applicable, the name of the facility that the applicant is applying for, the applicant's signature, and the date the application is signed.

(g) All applications shall be received by the Division no later than the deadline date identified in the notice. "Received" for the purpose of this Paragraph means that the application is in the possession of the Division. If the application is not received by the Division by the deadline, the applicant shall not be eligible to interview for the vacancy. However, if the Division does not receive the application by the deadline, an applicant may demonstrate compliance with this Paragraph by demonstrating he or she submitted the application in compliance with Paragraph (d) and any failure or delay in the delivery was due to causes beyond the applicant's control.

(h) At least 10 business days prior to the interview, the Business Enterprises Consultant who works with the applicant shall calculate the applicant's points for sanitation, seniority, and financial performance as set forth in Subparagraphs (i)(1), (2), and (3) of this Rule and inform the applicant of his or her point total in writing and shall include with that communication a description of any ways in which the Business Enterprises Consultant noted that the applicant failed to provide the information required by Subparagraphs (i)(1), (2), and (3) of this Rule. The applicant shall have five business days from his or her receipt of the notice from the Business Enterprises Consultant to request any adjustments to the point total. As part of the request, the applicant must provide to the Business Enterprise Consultant all supporting information with the request, including documents required to complete a new financial analysis and operation standard tool (FAOS) if another FAOS is requested by the applicant. The applicant's points for sanitation, seniority, and FAOS shall be shared with all members of the interview committee.

(i) The Business Enterprises Consultant shall assign points to each applicant for sanitation, seniority, and financial performance as follows:

- (1) Five sanitation points may be awarded based on the sanitation grades for the Business Enterprises facilities that were operated by an applicant, as follows:
 - (A) The applicant shall verify with the Business Enterprises Consultant that he or she has copies of every sanitation inspection form from the specified period so that the points can be calculated.
 - (B) One point shall be awarded for each sanitation grade point above 90, which shall be determined by averaging all sanitation scores received during the previous 24 months.
 - (C) Any points deducted on the sanitation review reports for deficiencies that are the responsibility of facility management, pertaining to the condition of bathrooms, floors,

ceilings and walls, shall be added in the calculations by the Business Enterprises Consultant.

- (D) An applicant who is a licensee with a score of 90 percent or greater on his or her most recent National Restaurant Association's ServSafe exam shall be assigned three sanitation points.
 - (2) A maximum of five seniority points may be awarded based on the number of years an applicant has worked as an operator in the Business Enterprises Program. The applicant shall be awarded 0.2 points for each 12 months worked as an operator in the Business Enterprises Program. The cutoff date for accruing time in the facility shall be the end of the month when the vacancy is advertised.
 - (3) A maximum of 50 financial performance points may be awarded. Financial performance for applicants who are operators shall be based on the facilities assigned to the operator. Financial performance shall be calculated by analyzing the average monthly sales and average gross profit percentage for sales during the 12-month period ending with the last day of the month preceding the month in which the vacancy is advertised. The cut-off date for calculating financial performance shall be the 12-month period ending with the last day of the month in which the vacancy is advertised. The FAOS shall be utilized to help determine the financial performance of the facility. A FAOS shall be completed by the Business Enterprises Consultant for a facility every two years to determine the optimum sales percentage and optimum gross profit percentage without consideration for theft or waste. Eighty-five percent of the optimum sales percentage and optimum gross profit percentage shall be the standard for each Business Enterprises facility.
 - (A) If an applicant who is not currently operating a Business Enterprises facility applies for a vacancy within 12 months of leaving a facility, the FAOS for the applicant's prior facility shall be used for the calculations in this Subparagraph if the FAOS was completed within the required two-year period.
 - (B) The applicant's Business Enterprises Consultant shall determine the FAOS points by tabulating all the invoices for purchases for resale for that facility for the 12-month period ending with the last day of the preceding month in which the vacancy is advertised. The Business Enterprises Consultant shall calculate the month sales average for each of the 12 months for the numbers identified in the following Subparts and using those monthly averages, determine the three months that are closest to the monthly average to allocate points as follows:
 - (i) applicants shall receive 20 points for meeting or exceeding 85 percent of their sales standard;
 - (ii) applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit percentage standard;
 - (iii) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum sales percentage;
 - (iv) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum gross profit percentage;
 - (v) applicants who are operators of a Business Enterprises military facility at the time of application shall be assigned 50 FAOS points;
 - (vi) applicants who are licensees at the time of application shall be assigned 40 FAOS points; and
 - (vii) applicants who have operated a Business Enterprises facility for less than 6 months prior to the cut-off date for calculating financial performance shall be assigned 40 FAOS points.
- (j) The Interview Committee shall consist of:
- (1) the Chief of the Business Enterprises Program or his or her designee;
 - (2) a Business Enterprises Program Consultant or Business Enterprises Program designee;
 - (3) the vice-chair of the Elected Committee of Vendors (ECBV) or ECBV designee; and
 - (4) the chair of the ECBV transfer and promotion subcommittee or ECBV designee.
- (k) The Interview Committee shall interview all eligible applicants who present for the scheduled interview. The Interview Committee shall select 15 questions developed by the Interview Committee prior to the interview. A maximum of two points per question may be awarded for a maximum total of 30 points by each Interview Committee member participating in the interview. The interview questions shall relate to any special needs of the

vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. There shall be at least two math questions. A calculator shall be provided by the Interview Committee, although applicants may bring their own calculator.

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

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

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

(n) The Interview Committee shall calculate the point total under this Rule for each applicant, which shall equal the sum of the points awarded to the applicant for sanitation, seniority, FAOS, the interview score pursuant to Paragraphs (i) and (k) of this Rule. The applicant with the highest point total shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest point total. In the case of an exact tie, the Division shall award the location to the applicant that has worked the longest period of time as an operator in a Business Enterprises facility.

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

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

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

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

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

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