

## TO BE RESCINDED

3304:1-21-07      **Bureau-operator agreements, bureau-temporary-operator agreements, initiating and concluding responsibility for the facility.**

(A) A bureau-operator agreement shall be entered into by BSVI and the licensee selected to become an operator by the procedure outlined in paragraphs (A) to (C)(8) of rule 3304:1-21-03 of the Administrative Code. The agreement shall specify that:

- (1) BSVI and the operator have the duties and responsibilities imposed by the business enterprise rules;
- (2) The operator shall operate the facility in accordance with the requirements of the bureau-grantor agreement, facility permit, or other agreement for that facility. This shall include maintaining specified hours of operation;
- (3) The operator's responsibility for the facility shall be for the duration of the agreement. This responsibility shall not be set aside by the operator's absence. The operator shall personally perform the duties imposed upon an operator by the business enterprise rules and shall not subcontract with or hire someone to perform said duties, unless on leave as stated in paragraph (A)(4) of rule 3304:1-21-04 of the Administrative Code;
- (4) The operator shall not, without the BE specialist's written approval, add to or take from the facility, any equipment;
- (5) The operator shall be responsible for the eventual return or reimbursement of the value of the inventory provided by BSVI except for temporary operators on fee;
- (6) The operator shall receive the net monthly proceeds and pay any service charges, as defined in rule 3304:1-21-08 of the Administrative Code, from the facility, which is operated under this agreement;
- (7) The operator shall make reports to BSVI in accordance with rule 3304:1-21-08 of the Administrative Code;
- (8) The BSVI director may immediately suspend the bureau-operator agreement for up to two weeks:
  - (a) If an operator is not fulfilling the terms of the bureau-operator agreement;

- (b) When the actions or inactions of the operator places BSVI in jeopardy of losing the facility because of noncompliance with the permit or bureau-grantor agreement;
- (c) If the operator is absent from the location without notice causing the facility to be closed in violation of the bureau-grantor agreement;
- (d) If the operator is engaging in felonious activity on the facility premises; or
- (e) If the actions or inactions of the operator cause or allow conditions to exist, which present a clear and present danger to employees, visitors or the public.

The bureau may terminate the agreement at the end of the two-week period after OVRC has had an opportunity to review any available documentation provided by the bureau concerning the operator and any written submittal by the operator in his/her defense and by a majority vote affirming the action of the bureau. As provided by law, operators may seek compensation for wrongful suspension or termination under this paragraph.

(B) The bureau-operator agreement shall terminate upon:

- (1) Termination of the bureau-grantor agreement;
- (2) Revocation or suspension of the operator's license in accordance with paragraph (A) of rule 3304:1-21-13 of the Administrative Code;
- (3) Thirty days' written notice by the operator to the BE assistant manager, or sooner with assistant manager approval;
- (4) The date on which the closing inventory required in paragraph (G) of this rule is conducted;
- (5) Notice of termination by the bureau after a two-week suspension of the bureau-operator agreement in accordance with paragraph (A)(8) of this rule.

(C) In regard to vacant facilities, BSVI, at its discretion, may enter into a bureau-temporary-operator agreement.

(D) A bureau-temporary-operator agreement may be entered into by BSVI and the agreement shall:

- (1) Have the duties of the operator as noted in paragraphs (A)(1) to (A)(4) of this rule.
  - (2) Indicate that the temporary operator shall not take leave without approval of the BE specialist.
  - (3) State that prices shall not be altered by the temporary operator without the consent and/or direction of the BE specialist.
  - (4) State that the agreement may be terminated immediately without cause upon written notice of either party.
- (E) Temporary-facility assignments shall be offered to operators/licensees listed on the temporary-assignment list for the district in which the facility, to be temporarily assigned, is located. The BE assistant manager shall maintain a temporary-assignment list for each district. Operators/licensees shall be listed on a temporary-assignment list for all districts of interest to them.
- (1) Operators/licensees will be placed in rank order, the highest being the operator with the lowest average net proceeds over the twelve months preceding the date when the need for a temporary operator for the vacant facility occurs..
  - (2) If more than one operator/licensee on the temporary-assignment list has zero income, the assistant manager shall offer the temporary assignment to the licensee believed to have the best potential for operating the facility. "Zero income" means that an operator/licensee has an income of zero in the month that the bureau is filling the need for the temporary operator.
  - (3) A temporary assignment shall be offered to an operator who is currently a party to a bureau-temporary-operator agreement, after all other operators/licensees on the list have declined the temporary assignment or have been deemed unable to meet the requirements for operation of the vacant facility.
  - (4) In situations where there is a possibility of the loss of a facility, an exception to the low-income priority may be made by the assistant manager.
  - (5) A statewide temporary-assignment list shall be established as follows:
    - (a) The assistant manager of each district shall mail a survey to all operators/licensees in their area offering the opportunity to apply for temporary assignments. The survey shall request that each interested

party complete and return the survey in order to update the temporary-assignment list by October first of each year.

- (b) During the year, operators/licensees will have the opportunity each quarter to add themselves to or remove themselves from the temporary-assignment list.
- (6) The operators/licensees meeting the criteria for inclusion on the temporary-assignments list shall:
- (a) Not have program/grantor debts or more than two late reports or payments in the previous twelve months.
  - (b) Not have currently pending discipline or have been removed from a facility according to rule 3304:1-21-07 or 3304:1-21-13 of the Administrative Code within two years of the date on which the temporary assignment is offered.
  - (c) Not have an active management plan.
- (F) The temporary operator shall be compensated by one of these methods:
- (1) The temporary operator may be paid a fee agreed upon by BSVI and the temporary operator. A temporary operator so compensated shall submit a monthly operating report, and shall list the fee as a deductible expense as listed in paragraph (H)(6) of rule 3304:1-21-08 of the Administrative Code. No service charges shall be assessed to a temporary operator being paid a fee. Surplus receipts, less expenses and wages, shall be submitted with the final monthly operating report of the agreement as closing cash.
  - (2) If the temporary operator is a licensee, he/she may choose to receive the net monthly proceeds from the unassigned facility and pay service charges according to paragraph (I) of rule 3304:1-21-08 of the Administrative Code.
- (G) When a vacant facility is filled , there shall be a detailed inventory performed. The persons involved have the following obligations:
- (1) The incoming operator shall be responsible, after notification by the BE specialist, for attending the closing inventory of the prior operator or sending a representative.

- (2) The exiting operator shall relinquish the facility in a clean and operable condition. That operator shall be responsible, after notification by the BE specialist, for attending the closing inventory or sending a representative.
- (3) The BE specialist shall:
  - (a) Notify the incoming operator and the exiting operator of the date and time of the closing inventory;
  - (b) Conduct or provide for the inventory;
  - (c) Assure the facility is transferred in an operable condition;
  - (d) Assure that an initial inventory form, and either a bureau-operator agreement or a bureau-temporary-operator agreement, have been signed for the facility; and
  - (e) Assure that the incoming operator receives copies of the initial inventory, either the bureau-operator or bureau-temporary-operator agreement, and the business enterprise rules within thirty days of date closing inventory is conducted.
- (H) Whenever an operator relinquishes a facility or the bureau must take charge of a facility, the BE specialist may assume temporary custody of the cash on hand until such time as outstanding service charges and inventory adjustment charges due to the bureau are resolved.

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CERTIFIED ELECTRONICALLY

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Certification

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Date

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