

### 3304:1-21-01 Definitions.

The following terms are used throughout Chapter 3304:1-21 of the Administrative Code.

(A) "Accessible Format" is providing information, forms, BE computer programs, and reports to all licensees in the format/media they have requested and on file with BE, including but not limited to regular print, large print, ~~be~~ Braille, ~~audio tape~~, or electronic media.

(B) "Active Participation" is when the bureau of services for the visually impaired (BSVI) and the Ohio vendors representative committee (OVR) meaningfully collaborate on major administrative decisions and policy and program development decisions affecting overall administration of Ohio's vending facility program pursuant to 34 CFR 395.14 and ~~34 CFR~~ 3304 :1-21-12 of the Administrative Code.

(C) "Agent" is any individual or entity that BE authorizes to carry out a responsibility under division 3304:1 of the Administrative Code.

(D) "Blind/legally blind" is a physical condition in which the central visual acuity is not more than 20/200 in the better eye with correcting lenses; or in which the visual acuity with proper correction, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees as defined in division (B) of section 3304.28 of the Revised Code.

(E) "BSVI" (i.e., bureau of services for the visually impaired) or "bureau," is the designated Ohio agency responsible for implementing the provisions of the Randolph-Sheppard Act and its amendments and sections 3304.28 to 3304.35 of the Revised Code in addition to the purpose outlined in paragraph (B) of rule 3304-1-01 of the Administrative Code. ~~The "rehabilitation services commission~~ Opportunities for Ohioans with Disabilities " (~~RSCOOD~~) is the agency responsible for overseeing BSVI.

(F) "Bureau-grantor agreement" (BGA) is the signed agreement between BSVI and grantor for a business enterprise (BE) facility.

(G) "Bureau-operator agreement" (BOA) is a signed permanent ~~or temporary~~ agreement between BSVI and the operator of a facility.

~~(H) "Bureau-Temporary Operator agreement" (BTOA) is a signed temporary agreement between BSVI and the operator of a facility for a limited period of time which is designated in the agreement.~~

~~(H)~~ "Business Enterprise ~~assistant area~~ manager" is the BSVI employee who reports directly to the BE program manager of BSVI or the director's designee and is the principal field manager for the BE program in an assigned area of the state.

~~(H)~~ "Business Enterprise program" (BE) is the program within BSVI responsible to carry out the provisions pursuant to 34 C.F.R. part 395 of the Randolph-Sheppard Act, sections 3304.28 to 3304.35 of the Revised Code, and paragraph (F)(1) of rule 3304:1-21-12 of the Administrative Code.

~~(K)~~ "BE manager" is the BSVI staff person who reports directly to the director of BSVI and shall direct and monitor the operation of the business enterprise program, its staff and its funds statewide, recommend

and institute changes in the program, enter into settlements when appropriate, and perform such other duties as required by the BSVI director.

(~~K~~L) "Business Enterprise rules" is the complete set of administrative rules governing the BE, which have been promulgated in accordance with Section [119.03](#) and set forth in Chapter 3304. of the Revised Code.

(~~L~~M) "Business Enterprise Specialist" (BES) is the BSVI employee assigned to provide consulting services to the operator to maximize efficiency, income and performance.

(~~M~~N) "Criminal Activity" is conviction of, plea of guilty or no-contest to, or a judicial finding in any jurisdiction of aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary or of a felony or misdemeanor of the first, second, or third degree, involving gambling, fraud or misrepresentation, theft, or any crime of moral turpitude, as long as the record of the conviction has not been sealed.

(~~N~~O) "Designee" is a BE staff member knowledgeable in BE and authorized by BE to carry out a responsibility or task.

(~~O~~P) "Discipline" is denial, revocation, or suspension of the license.

(~~P~~Q) "Displaced operator" is an operator under a permanent BOA whose facility has been temporarily closed, or whose net facility sales have been temporarily reduced by ~~no less than two thirds~~ at least fifty percent, for more than two weeks due to remodeling or by extraneous circumstances such as strike or disaster. In such cases, the operator shall be considered a "Displaced operator" only for the duration of the temporary closure or temporary reduction. Should a facility be permanently closed the operator shall be considered displaced for six months after closure. A displaced operator may receive a fair minimum return payment. However if the displaced operator is under a BTOA the fair minimum return payment will be forfeited and the operator will be compensated in accordance with the BTOA.

(~~Q~~R) "Electoral district" is any one of the seven geographical areas as defined by the bureau from which representatives and alternates of the Ohio vendors representative committee (OVRC) are elected to equitably represent the operators.

(~~R~~S) "Facility" is automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other appropriate auxiliary equipment which may be operated by licensees who are blind which is necessary for the sale of newspapers, periodicals, confections, tobacco products, food, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises, including the vending or exchange of chances for the state lottery and as otherwise defined in 34 C.F.R. 395.1(x) . A facility may consist of one or more sites as determined by BE.

(~~S~~T) "Facility announcement" is a notice announcing a current or forthcoming permanent operator position available in an existing or newly developed BE facility.

(~~T~~U) "Federal Fiscal Year" (FFY) is the time period beginning October first and ending September thirtieth.

(~~U~~V) "Federal property" is property as defined in 34 CFR Part 395 I (g). \_\_\_\_\_

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- (~~VW~~) "Grantor" is the person or entity who is responsible for the property housing a BE facility or site.
- (~~WX~~) "Grantor required payment" is any fee, assessment or other financial obligation as assigned to the operator by BOA/BTOA.
- (~~XY~~) "Inventory adjustment charge" is reimbursement to BE or operator resulting from a difference between the value of facility goods on hand at the time of the closing inventory and the value of BE provided inventory.
- (~~YZ~~) "License" is a written document issued by BE to a person authorizing such person to operate a BE facility ~~on federal or other property~~.
- (~~ZAA~~) "Licensee" is any person licensed by BE to operate a facility.
- (~~AABB~~) "Ministerial decision" is a decision which has no material impact on the nature, quality or quantity of service provided to BE licensees, and will not adversely impact opportunities for licensees. Ministerial decisions only involve matters as to which no active participation with the OVRC is required pursuant to rule 3304:1-21-12 of the Administrative Code.
- (~~BCCC~~) "Monthly Operating Report (MOR)" is facility financial information as submitted monthly by the facility operator and consists of all sales, sales tax collected, discounts, gifts, rebates, federal vending machine income as described in CFR 34, Part 395.32, income from subcontracted facility sales, promotional considerations, and bonuses, either monetary or in kind, stock purchased, business related expenses, employee wages, draw, stock and supply inventory, and business cash on hand, which the operator has the power to obtain and control the disposition thereof, accrued from operation of a facility.
- (~~CCDD~~) "~~Ohio Rehabilitation Services Commission Opportunities for Ohioans with Disabilities~~" (~~ORSCOOD~~) is the state agency responsible for helping people with disabilities seek and retain substantial gainful employment in Ohio.
- (~~DEEE~~) "Ohio Vendors Representative Committee" (OVRC) is the group of operators elected from their respective districts in accordance with rule 3304:1-21-12 of the Administrative Code.
- (~~EEEE~~) "Operator" is a licensee authorized to operate a facility through a signed BOA and/or bureau temporary operator agreement (BTOA).
- (~~FFGG~~) "Other Expenses" is expenditures on the daily cash report as defined in appendix A to this rule.
- (~~GGHH~~) "Professional Manner" is exemplifying methods, character, and standards of a business person, which includes demonstrating sound fiscal management practices.
- (~~HHII~~) "Records Review" is the review of records as prescribed by BSVI. The review ~~pertaining~~ pertains to the operation of a BE business and includes financial information regarding sales, sales tax collected, discounts, gifts, rebates, federal vending machine income as described in CFR 34, Part 395.32, income from subcontracted facility sales, lottery commission, promotional considerations, and bonuses, either monetary or in kind, stock purchased, business related expenses, employee wages, draw, stock and

supply inventory, and business cash on hand. [Verification of information on a monthly operating report \(MOR\) does not constitute a records review.](#)

~~(HJJ)~~ "Regular Meeting" is any prearranged gathering of the OVRC and BE by a majority of its' members to discuss public business. A schedule of regular meetings including dates and times will be set in July of each year.

~~(HKK)~~ "Seniority" is the time the licensee accrues beginning on the date BE issues the license or the date pursuant to the earliest documentation establishing participation in the Ohio BE.

~~(KLL)~~ "Service charge" is the total of the fee assessed by BE upon the operator's net monthly proceeds and may include penalty charges, as well as co-payment for maintenance and repair labor charges.

~~(LMM)~~ "Site" is a business location suitable for vending, determined to not have sufficient gross sales to exist as an independent BE Facility.

~~(LMMNN)~~ "Special Meeting" is any meeting other than a regular meeting when notice is provided pursuant to paragraph ~~(EF)~~ of rule [3304:1-21-12](#) of the Administrative Code.

~~(MMNOO)~~ "State ~~S~~Governmental property" is defined in division (C) of section [3304.28](#) of the Revised Code.

~~(NNOOPP)~~ "Vacant Facility" is a suitable vending location without a licensee permanently assigned, or for which BE has notice of an operator's pending departure.

## Appendix A

1 Other expenses are costs personally paid by the operator for the following goods and services necessary to operate a facility; an operator may subtract such costs from the gross monthly income if the expenses are documented by cancelled checks, receipts, or other documentation, and are paid within the report's period. Other expenses shall be subject to review and approval by BE and are:

(a) Supplies for expendable items which are necessary for day-to-day facility operation, but are not for resale as defined in paragraph (B) [3304:1-21-05](#) of the Administrative Code.

(b) Janitorial service for a commercial firm or independent contractor to clean the facility, or to remove trash. Such costs are deductible unless the bureau-grantor agreement, facility permit, or other BSVI agreement assigns such responsibility to someone other than the operator.

(c) Business licenses.

(d) Telecommunications charge for the cost of required business telephone or business internet services.

(e) Cost of uniforms, rented or owned, and laundry charges only when used for the business.

(f) Business advertising for the reasonable cost of advertising and promotional activities intended to support and/or increase facility sales.

- (g) Premiums for insurance coverage for off-site storage facilities.
- (h) Rent/commission to grantor, if required by agreement for location.
- (i) Expense for storage space.
- (j) Utilities for the facility when not included in rent.
- (k) Employer contribution for social security.
- (l) Workers' compensation premiums.
- (m) Ohio unemployment taxes.
- (n) Federal unemployment taxes.
- (o) Sales taxes.
- (p) Pre-approved training expenses of up to one-thousand dollars per year; such training must be directly related to the job.
- (q) Temporary operators on BTOA on fee.
- (r) Vehicle expenses to be used only if a vehicle is required for a facility. Any vehicle expenses listed on the monthly operating report shall require an additional vehicle expense report to be completed and retained by the operator for that monthly operating report.  
  
Only one method of expensing the vehicle shall be allowed each calendar year, unless a new vehicle is acquired during the year. Commuter miles, personal use of vehicle and/or depreciation costs must be excluded in either method.  
  
Method one - actual costs shall include the business percentage of the following expenses: vehicle insurance, vehicle registration, gasoline, oil, other maintenance costs, and monthly lease or payment.  
  
Method two - standard mileage rate, as allowed by the internal revenue service for that calendar year for each business mile.
- (s) Pre-approved miscellaneous expenses. Documentation for these expenses may be requested to accompany the monthly operating report.
- (t) Business dues.
- (u) Professional merchandise delivery services.
- (v) Pest exterminator services.
- (w) Bookkeeping/accounting services.

(x) The purchase of a computer and/or business-related computer expenses.

(y) Business legal fees (not associated with any adversarial procedures against [RSCOOD](#)).

(z) Air conditioner, filter, and fire suppression services and/or security system costs.

(aa) Banking fees.

(bb) Documented refunds to customers.

**3304:1-21-02 Eligibility for business enterprise training and licensure.**

(A) To be eligible to enter into BE training to become a licensee, a person must meet the following criteria:

(1) Is a citizen of the United States;

(2) Is at least twenty-one years of age;

(3) Is legally blind, as defined in paragraph (D) of rule [3304:1-21-01](#) of the Administrative Code;

(4) Has a high school diploma or has obtained a general education diploma;

(5) Has the ability to operate a facility with or without reasonable accommodations;

(6) Has math skills to calculate fractions, decimals and percentages;

(7) Demonstrates effective oral and written communication skills;

(8) Demonstrates appropriate interpersonal skills for a retail business environment;

(9) Has successfully completed a pre-evaluation in-facility training experience as required;

(10) Has no past due BE debts in Ohio or any other state and no outstanding Randolph Sheppard program charges;

(11) Demonstrates ability to manage personal finances which shall include a credit check;

(12) Passes required drug testing;

(13) Has no record of criminal activity.

(B) A person is eligible for a license if the person:

(1) Demonstrates the ability to operate a facility without or without accommodations and Ssuccessfully completes BE approved training;

(2) Passes the licensure exam; and

(3) Continues to meet the eligibility requirements listed in paragraph (A)(3) of this rule.

(C) A person shall no longer be eligible to maintain a license when that person:

(1) Voluntary surrenders the license; ~~or~~

(2) Is deceased; or,

(3) Fails to enter into a BOA or BTOA for two consecutive years, unless after written request from the licensee to BE and through active participation with OVRC, BE agrees to grant additional one year extension(s).

(D) Any ineligibility for licensure listed in paragraph (C) of this rule shall not be subject to the provisions of rule 3304:1-21-13 of the Administrative Code or Chapters 119.06 to 119.09 of the Revised Code.

(E) Upon licensure BSVI may only deny, revoke, or suspend a license pursuant to rule 3304:1-21-13 of the Administrative Code.

#### 3304:1-21-03 Facility announcements, application procedure, and selection.

(A) Vacant facilities shall be posted except as set forth in paragraph (~~KB~~) of rule 3304:1-21-~~03-06~~ of the Administrative Code. Through active participation with OVRC, BE may reconfigure a vacant facility prior to posting, as set forth in (F)(1)(i) of rule 3304:1-21-12. If there is no qualified applicant for the facility posting, BE through active participation with OVRC will determine if the vacant facility shall be reposted. The facility announcement shall be posted for no less than thirty-two calendar days.

(B) The selection panel will develop the facility announcement which shall include the following:

(1) The name, address, and number of the facility;

(2) Whether the facility is on stategovernmental, federal, or private property, and if on state governmental property that the operator must comply with sections 3304.29 to 3304.35 of the Revised Code and paragraph (A) of rule 3304:1-21-04 of the Administrative Code;

(3) Closing date and time on which the application and supporting documents must be received by the designated bureau representative;

(4) The estimated starting date for the new operator;

(5) A description of the facility with:

(a) An estimate of the number of customers served each day;

(b) Seating capacity;

(c) The types of food services the facility provides, e.g., carry-out, vending, cafeteria, or other;

(d) Equipment;

(e) Items stocked for sale;

(f) Opening day cash recommendation [and/or additional initial operating expenses](#);

(g) Approximate initial inventory amount;

(h) Information about whether space, if any, is available at the facility for inventory storage or if the operator must provide off-site storage and product transport;

(i) The yearly total receipts and net proceeds, for up to three preceding fiscal years as records allow, or for a new facility, the projected yearly total receipts and net proceeds;

(j) Reasons for fluctuation in proceeds, if known;

(k) The days and hours of operation;

(l) The number of employees presently employed, with notation that persons who are blind or otherwise disabled and are qualified for the job shall be given preference when hiring in any BE facility;

(m) Available public transportation;

(n) Projected changes in the facility (e.g., relocation and remodeling);

(o) Any special training, physical requirements, and mobility skills required for the job;

(p) The location, type, and level of competing food service;

(q) BE designee, tour availability and special requirements;

(r) Fees, assessments, financial obligations, and other specific items required by the BGA;

(s) Security clearances required by the BGA;

[\(t\) A description of any site determined to be subject to refusal by the successful applicant.](#)

(C) In order to be considered an eligible applicant, licensees who apply for the available facility must:

(1) Submit a completed application which states the applicant's name, business address, telephone number, current facility, if any, facility desired and all supporting documents using the form prescribed by BE which must be received at the specified location by the date and time specified in the facility announcement; [and](#)

~~(2) Submit for verification the following supporting documents:~~

~~(a) Copy of current state of Ohio vendors license issued by the Ohio department of taxation;~~

~~(b) If applicable, a copy of the worker's compensation certificate verifying payments are current as of the facility announcement posting date;~~

~~(3) Have operated their current facility for at least one hundred twenty days, if the applicant has a permanent facility at the time of application;~~

(42) Have no past due program charges in Ohio or any other state's Randolph Sheppard program or grantor required payments as of the application deadline date.

(D) If the selection panel by majority vote determines that an applicant attempts to obtain a facility through fraud, falsification, or criminal activity the applicant shall be removed from consideration.

(E) A selection panel shall consist of the:

(1) BE program manager or designee as selection panel chair;

(2) OVRC representative and alternate for the area of the vacant facility unless the OVRC representative or alternate is an applicant for the vacant facility, or declines to serve. A member of the selection panel who has a personal interest or conflict of interest in relation to the facility or applicants, direct or indirect, shall voluntarily withdraw from the selection panel. In such case the OVRC chair or the OVRC chair's designee will participate.

(F) When there is more than one eligible applicant the selection panel will award the facility to the candidate that accumulates the most points assigned by the majority vote of the selection panel members for each of the following criteria:

~~(1)~~ Applicant is a licensee, then apply the default score of nine points;

(2) Applicant was/is an operator for less than twelve months in the past twenty-four months prior to the application deadline, then apply the default score of ten points;

~~(313)~~ Applicant has been an operator for twelve months or more in the past twenty-four months and has:

(a) No late reports, inventories, or payments, in the most recent twelve months of the past twenty-four months prior to the application deadline, then apply four points; or

(i) No more than one late report, inventory, or payment, in the most recent twelve months of the past twenty-four months prior to the application deadline, then apply two points.

~~(424)~~ Applicant had an Operator Performance Improvement Plan ~~plan of corrective action~~ in the twenty-four months prior to the application deadline, then apply minus two points;

~~(535)~~ Applicant file demonstrates three or more a pattern of customer or grantor complaints in a six month period of time over ~~in~~ the last three years, then apply minus four points;

(646) Applicant has supplied the selection panel a copy of their current safety and sanitation certificate, then apply one point;

(757) Applicant has supplied the selection panel a copy of their current CPR/first aid certificate, then apply one point;

(868) Applicant has supplied the selection panel documentation demonstrating attendance at an ~~in-service training~~ upward mobility training in the twenty-four months prior to the application deadline, then apply one point for each with a maximum of ~~two-three~~ points;

(979) Applicant has supplied the selection panel verified documentation of a college degree or five years experience in business management, then apply one point;

(10810) Applicant during their career has managed a facility for a minimum of one year with the same service format (~~i.e. vending, cafeteria, counter, or combination~~), then apply three points;

(11911) Applicant has job description on file with BE or has no employees, then apply one point;

(12102) Applicant has written cleaning schedule in current location, then apply one point;

(13113) Applicant has supplied the selection panel with a marketing plan, on a form prescribed by BE. If the implementation of the marketing plan has been verified, then apply one point. ~~documentation for current marketing strategy implemented within two years prior to the application deadline, then apply one point;~~

(1424) Applicant meets ~~or exceeds~~ gross profit goal percentage in the most recent twelve months of the past twenty-four months prior to the application deadline, then apply one point;

(1535) Applicant meets ~~or exceeds~~ net profit goal percentage in the most recent twelve months of the past twenty-four months prior to the application deadline, then apply one point.

(G) In case of a tie in point totals the selection panel will award the facility to the applicant with the most seniority, in accordance with the seniority list managed by BE. ~~further evaluate the tied applicants by using criteria in paragraph (F)(3) of this rule looking back in one year increments for each of the tied applicants adding additional points for each year the criteria is met until the tie is broken or a maximum of three years have been evaluated. In the event a tied applicant's record is not comprised of three additional years the facility will be awarded to the applicant with the longest record that generates the most additional points. If after the additional three year evaluation there is still a tie, the selection panel chair shall draw lots to determine the selected operator.~~

(H) If by majority vote the selection panel determines that none of the applicants meet the requirements of paragraph (C) of this rule, a determination for reposting the vacant facility shall be made per paragraph (A) of this rule.

(I) If the successful applicant declines the facility then the next applicant with the most total points shall be offered the facility. Ties shall be broken as listed in paragraph (G) of this rule.

(J) Successful applicants who decline the facility after the award offer shall not be an eligible candidate for any operator openings for ~~one hundred twenty~~thirty calendar days. If the awarded facility is a new or temporarily closed facility in which the actual opening has been delayed more than thirty calendar days from the opening date stated in the facility announcement this penalty shall not apply. A successful candidate who declines the facility within two business days after the award notice is not subject to this thirty day ineligibility period.

~~(K) BE may enter into a BTOA for up to twelve months to ensure the continued operation of a vacant facility or to establish reliable sales data. Any extension beyond twelve months requires the active participation of the OVRC. The BTOA shall:~~

~~(1) State the duties of the operator as defined in the BTOA;~~

~~(2) State that the temporary operator shall not take leave without approval of BE;~~

~~(3) State that prices shall not be altered by the temporary operator without the consent and/or direction of BE;~~

~~(4) State that the agreement may be terminated immediately without cause upon written notice of either party;~~

**Comment [AL1]:** Relocate to rule 6

~~(L) Temporary facility assignments shall be offered to displaced operators based on length of time displaced and if no displaced operators accept the assignment, then to licensees with the least income. For purposes of this rule, "least income" shall be determined by adding the operator's net proceeds from all BE facilities as reflected on the operator's MOR for the previous twelve months. Ties in least income shall be broken based on seniority. If there is still a tie the BE designee shall draw lots to determine the selected operator. All offers shall be for net proceeds basis first then offered on a fee basis.~~

~~(M) In situations where there is a possibility of the loss of a facility or sales figures need to be established or re-established, an exception to the displaced operator/low income priority may be made by BE, with the active participation of the OVRC.~~

~~(N) Operators/licensees are not eligible for temporary facility assignments if they:~~

~~(1) Have past due program/grantor debt; or~~

~~(2) Have submitted three or more late reports and/or payments in the previous twelve months; or~~

~~(3) Have pending discipline; or~~

~~(4) Have been removed from a facility according to paragraphs (C)(1), (C)(2), (C)(4) and (D) of rule 3304:1-21-09 or rule 3304:1-21-13 of the Administrative Code in the previous twelve months of the date on which the temporary assignment is offered; or~~

~~(5) Are on a plan of corrective action.~~

**Comment [AL2]:** Relocate to rule 6

(~~K~~) BE will maintain and update the licensee seniority list quarterly.

3304:1-21-04 Operator's responsibilities, leave and self-employment status.

(A) The operator shall:

(1) Comply with section 3304.30 of the Revised Code.

(2) Consult with the BE specialist prior to creating a position and contact the specialist for referrals when filling a new or vacant position. Operators may hire temporary employees while actively seeking qualified applicants who meet the preferences set forth in paragraphs (A)(3) and (A)(4) of this rule. Operators shall document their outreach and other efforts to meet the preferences set forth in paragraph (A)(3) of this rule.

(3) When hiring give preference to qualified applicants in the following order:

(a) ~~People-Individuals~~ who are blind;

(b) Then ~~RSC-individuals who are currently receiving vocational rehabilitation services from OOD consumers~~ with visual impairments;

(c) Then ~~RSC-individuals who are currently receiving vocational rehabilitation services from OOD consumers~~;

(d) Then ~~persons-individuals~~ with other disabilities.

(4) Not unlawfully deny employment to any qualified person.

(5) Comply with provisions as outlined in rule 3304:1-21-06 of the Administrative Code.

(6) Operate facilities in accordance with the BGA ~~or permit /permit stated operator duties~~.

(7) Designate someone to assume supervision of the facility and notify BE of the designee if the operator is absent from the facility for more than one business day. During the operator's absence from the facility, all responsibilities remain with the operator and shall not be set aside by the operator's absence.

(8) Be responsible for complying with federal, state, and local laws with respect to, but not limited to, taxes, workers' compensation, unemployment insurance, and social security taxes. Operators are self-employed persons and not employees of the state of Ohio.

(9) Subcontract only with express prior written approval of BE.

(a) The criteria to consider approval for subcontracting are:

(i) Achieve compliance with the BGA; or

(ii) Implement a partnering arrangement to produce sales from a specific product line or market segment not otherwise available or feasible for the operator to manage.

(b) All income from subcontracted sales shall become part of the facility's total monthly receipts and shall be reported by the operator as indicated in rule [3304:1-21-01](#) of the Administrative Code.

(c) All subcontracting arrangements shall be evaluated on an individual basis.

(10) Maintain a drug-free workplace. [Licensee or any of the licensee's employees shall not be under the influence of, consuming, possessing or distributing illegal substances or alcohol at a BE facility.](#)

(11) Provide BE with the operator's current home address and telephone number and current business address and telephone number.

(12) ~~Observe~~ [Maintain](#) a high standard of personal hygiene. Attire shall be appropriate for the facility as determined by BE or as specified in the BGA.

(13) Acquire, maintain, and, upon request, provide evidence of adequate liability insurance as required by the BGA, [permit](#) or law.

(14) Unless otherwise established by contract, permit or regulation, the operator shall establish retail prices for merchandise.

(15) Provide each employee a payroll earnings statement each pay period and each calendar year, and retain copies of these statements for business records. [All employees shall be issued a W-2 or 1099 form.](#)

(16) Not add to or take from the facility any equipment without the BE's written approval.

(17) Be responsible for routine cleaning and maintenance of the facility and equipment. [Cleaning and maintenance shall be appropriate for the facility as determine by BE or as specified in the BGA/permit.](#)

(18) Acquire adequate inventory storage space if not available at the facility. Such storage shall be in compliance with any applicable health and property use codes. [Acquired storage shall be reasonable size and cost for the facility.](#)

(19) Prepare and retain a detailed daily cash report for each day there is a business expenditure or revenue collection including itemized expenditures on the daily cash report.

(20) Prepare a report listing monthly totals to include but not limited to, sources of total monthly receipts and requested expenditures. [The listing of monthly totals shall include revenue collection for each business address location for the assigned facility.](#)

(21) Submit to a record review no more than once every ~~three~~ [two](#) federal fiscal years performed by BE [or agent](#) from the effective date of this rule except as provided for in paragraph (A)(4) of rule [3304:1-21-09](#) of the Administrative Code. A record review that results in a finding is subject to rule [3304:1-21-10](#) of the Administrative Code.

(22) Operate the facility in a professional manner.

(23) Execute facility-related transactions only through the operator's business accounts.

(24) Be subject to penalties for late or partial payments and/or reports as noted in rule [3304:1-21-09](#) of the Administrative Code.

(25) Be responsible for the return or reimbursement of the value of the inventory provided. This applies to ~~assigned operators under a BOA or BTOA, including operator on fee or net proceeds, unless an exception is specified in the BTOA, and temporary operators on fee or net proceeds unless there is an exemption to this requirement specifically stated in the BTOA.~~

(26) Be responsible for completing and submitting ~~the following~~ MOR reports to BE in the format prescribed by BE. All purchases and liabilities must be liquidated, processed for collection or determined uncollectible within ninety days of the day it is incurred ~~and shall include, but not be limited to, the following reports:~~

~~(a) The MOR submitted in paper format completed in accordance with rule [3304:1-21-01](#) of the Administrative Code due the first day of the following month and will not be considered late if received or postmarked by close of business on the tenth calendar day of the following month. If such day is Saturday, Sunday, or legal holiday, the due date is the next BSVI workday. If an electronic MOR is required to be completed in accordance with rule [3304:1-21-01](#) of the Administrative Code it is due the first day of the following month and will not be considered late if received by close of business on the twenty-fourth calendar day of the following month; and~~

~~(b) Be responsible for completing and retaining a~~ detailed stock inventory of BE owned facility merchandise ~~that~~ shall be completed and submitted with the December and June MOR except ~~when the MOR is being filed electronically or~~ when there is a facility closing within thirty days prior to either of these dates. Additional inventories may be required when BE deems them necessary for reasonable business purposes. BE may require operator participation.

#### **3304:1-21-05 Equipment, supplies and initial stock inventory.**

(A) Equipment is owned and shall be maintained by BE. Equipment includes any item with a depreciable life of one year or more.

(B) Supplies shall be provided by BE initially. This includes any item with a depreciable life of less than one year not included in paragraph (C) of this rule. Supplies shall be replaced by the operator thereafter.

(C) BE shall provide an initial stock inventory. Stock inventory includes items available for retail sale. The operator shall maintain this stock inventory at the level provided by the bureau. ~~or may reduce the inventory through an agreement with BE. The agreement shall include the amount of the payment, payment dates, the current initial inventory amount and the amount of reduction to reach the initial inventory target.~~

(D) Lottery tickets are not included in a BE facility's inventory count and shall not be counted/reported as part of the semi-annual inventory. Operators must adhere to the agreement between the Ohio Lottery Commission and the operator.

3304:1-21-06 Bureau-operator, bureau-temporary-operator agreements.

(A) A BOA or BTOA shall be entered into between BE and the licensee selected to become the operator by the procedure outlined in rule 3304:1-21-03 or 3304:1-21-06 of the Administrative Code. The agreement shall specify that the operator shall:

- (1) Operate the facility in accordance with the requirements of the administrative rules, BOA, BTOA, BGA, facility permit, or other agreement for that facility;
- (2) Receive the net monthly proceeds and pay any service charges, as defined in rule 3304:1-21-01 of the Administrative Code, from the facility, which is operated under this agreement;
- (3) Submit reports required by administrative rules.

(B) BE, with consultation of the selection panel, may enter into a BTOA to ensure continued operation of a vacant facility. Any extension beyond six months requires the active participation of the OVRC. The selection panel, will select a temporary operator, giving consideration to the transitioning operator, displaced operators, and lowest income operators.

(C) Operators/licensees are not eligible for temporary facility assignments if they:

(1) Have past due program/grantor debt; or

(2) Have submitted three or more late reports and/or payments in the previous twelve months; or

(3) Have pending discipline; or

(4) Have been removed from a facility according to paragraphs (G)(1), (G)(2), (G)(4) and (I) of rule 3304:1-21-06 or rule 3304:1-21-13 of the Administrative Code in the previous twelve months of the date on which the temporary assignment is offered; or

(5) Are on an Operator Performance Improvement Plan.

(D) The BTOA shall:

(1) State that the temporary operator shall not take leave without approval of BE;

(2) State that prices shall not be altered by the temporary operator without the consent and/or direction of BE;

(3) State that the agreement may be terminated immediately without cause upon written notice of either party.

(E) The temporary operator shall be compensated in accordance with the BTOA by fee or net proceeds.

(1) If compensated by net proceeds, the temporary operator is required to pay service charge in accordance with a licensee then the operator will be paid in accordance with paragraph (L) of rule

~~3304:1-21-03 of the Administrative Code and pay service charges according to rule 3304:1-21-08~~ of the Administrative Code.

~~(G2)~~ The temporary operator who is on fee shall pay all facility profits to BE. Facility profits are due every third MOR- after assuming the temporary facility. or the reporting period when the MOR is submitted and ~~The temporary operator shall~~ record this payment on the MOR for the same reporting period. All unpaid profits shall be reported and paid on the final MOR.

~~(BF)~~ The BSVI director may immediately suspend the BOA for up to forty-five calendar days which shall not be considered discipline. The BSVI Director may extend the suspension of the BOA beyond forty-five days, up to 90-days with active participation of the OVRC.

(1) When the actions or inactions of the operator places BE in jeopardy of losing the facility because of noncompliance with the permit or BGA;

(2) If the operator is absent from the location pursuant to rule 3304:1-21-04 of the Administrative Code causing the facility to be closed or temporarily closed in violation of the BGA;

(3) If the operator is indicted ~~and~~ or engaging in criminal activity as defined in paragraph (N) of rule 3304:1-21-01 of the Administrative Code;

(4) If the actions or inactions of the operator cause or allow conditions to exist, which present danger to the operator or others.

(5) The Operator's access to the facility has been revoked ~~to access the facility.~~

~~(GC)~~ The BSVI director shall terminate the BOA for the following reasons:

(1) Failure to pay any fee required through the BOA by close of business on the fifteenth calendar day after receipt of the thirty day notice. Copies of the notice shall be sent to the area OVRC representative and alternate;

(2) Failure of an operator to submit an MOR or inventory at the designated BE location by close of business on the fifteenth calendar day after receipt of the thirty day notice. Copies of the notice shall be sent to the area OVRC representative and alternate;

(3) Termination of the BGA, whether voluntary or involuntary;

(4) Revocation or suspension of the operator's license in accordance with rule 3304:1-21-13 of the Administrative Code;

(5) BE approval of ~~a thirty day~~ written notice of resignation by the operator to BE;

(6) The date on which the closing inventory required in rule 3304:1-21-07 of the Administrative Code is conducted;

(7) For reasons noted in section F of this rule, with active participation of the OVRC.

(8) Failure to successfully complete an Operator Performance Improvement Plan.

(9) As otherwise listed in Chapter 3304:1-21 of the Administrative Code.

(H) Upon certification to the attorney general's office for past due program charges, BE may revoke an operator's license in accordance with rule 3304:1-21-13 of the Administrative Code unless paid in full within one hundred twenty days of certification.

(I) Any unpaid program charges more than forty-five days past due shall have a twenty-five per cent penalty added to the total of unpaid program charges and shall then be forwarded to the state of Ohio, attorney general's office, collection recovery unit in accordance with section 131.02 of the Revised Code.

#### 3304:1-21-07 Closing Opening and Transitioning a facility.

(A) When a facility is transitioned through award, temporary or permanent closing, or combined with an existing facility, or when there is a change in the BOA or operator status, there shall be a detailed stock and equipment inventory performed. BE shall count all stock inventory they determine to be saleable and useable for the location.

(B) The operator obligations:

(1) The outgoing and incoming operator or their designee assisted by BE shall complete the closing inventory for stock/supplies and BE equipment;

(2) The exiting operator shall relinquish the facility in a clean and operable condition ~~as required in 3304:1-21-04 (A)(17) of the Ohio Administrative Code.~~ If BE determines that the facility is not in a clean and operable condition the exiting operator may be invoiced for the cost to restore the facility to a clean and operable condition;

(3) One week prior to closing inventory the outgoing operator shall provide BE with a copy of the most recent semi-annual inventory and a list of new products and prices for products not listed on the semi-annual inventory.

(4) On the day of the closing inventory the outgoing operator and incoming operator will agree on fair market value of any products where prices have not been provided prior to closing inventory date. If the operators cannot agree on a fair market value, BE will assign a fair market value.

(5) Within one week following the date of the closing inventory the incoming operator may submit, to BE, a written request that the value of ~~the~~ specific items not be included in the value of the opening inventory. BE will have final determination of items to be included or excluded from the value of the incoming operators opening inventory.

~~(3) On the day of the closing inventory the exiting operator shall furnish to BE evidence of the purchase price for all stock/supplies for which the operators have not agreed upon price. The operator's failure to provide the evidence on the day of inventory shall result in zero credit being assigned to that inventory item. When BE takes charge of a facility pursuant to paragraph (D) of this rule, the operator shall have~~

~~fourteen days from the date of the closing inventory to provide evidence of the purchase price for all stock/supplies. If not received by close of business on the fourteenth day, the operator shall receive zero credit for that inventory item(s);~~

~~(46) Submit the closing MOR and any outstanding inventory or other charges within thirty days of receipt of the closing inventory documentation from to BE within 30 days of receipt of closing inventory.~~

~~(57) Submit payment for final service charge, any outstanding inventory charges and any other charges within thirty days of receipt of the closing statement from BE.~~

(C) The BE obligations:

(1) Schedule and notify the outgoing and the incoming operator of date and time of the closing stock and equipment inventory;

~~(2) Prepare inventory closing forms for closing inventory, utilizing most recent semi-annual stock inventory from outgoing operator.~~

~~(23) Organize and represent BE at the stock and equipment inventory as described in paragraph (A) of this rule. On the day of the closing stock and equipment inventory, BE will obtain operator, or operator's designee, agreement and signature on the stock and equipment inventory count. And upon request, BE shall provide a copy of that day's stock and equipment inventory count. and complete and submit all closing inventory documentation. BE shall provide a copy of that day's physical inventory count within one business day signed by both operators;~~

~~(34) Assure the facility is transferred in an operable condition and provide the incoming and outgoing operator a current copy of the facility equipment inventory signed by the incoming and outgoing operators and BE;~~

~~(45) Complete a closing inspection noting facility and equipment condition and cleanliness signed by the incoming and outgoing operators and BE;~~

~~(56) Assure that an inventory form of that day's count and either a BOA/BTOA, have been signed by the operator for the facility the day of the closing inventory;~~

~~(67) Assure that the incoming operator receives copies of the detailed stock inventory, BOA/BTOA, and the administrative rules governing the BE program within fifteen calendar days of date closing inventory is conducted. This time may be extended when BE takes charge of a facility pursuant to paragraph (D) of this rule.~~

(D) Whenever BE must take charge of a facility, due to the suspension of the BOA or BTOA pursuant to paragraph (BF) of rule ~~3304:1-21-09-3304:1-21-06~~ of the Administrative Code, or the termination of the BOA or BTOA pursuant to paragraph (CG) of rule ~~3304:1-21-09-3304:1-21-06~~ or paragraph (A)(2) ~~or (A)(3)~~ of rule ~~3304:1-21-10~~ of the Administrative Code, BE may assume temporary custody of the cash on hand until such time as outstanding service charges and inventory adjustment charges due BE are resolved. Cash on hand will be used to first resolve any outstanding program debt, if applicable, prior to issuance of funds to outgoing operator.

(E) Any exchange of cash on hand between operators during a facility transition shall be a private transaction and BE shall not be responsible.

**3304:1-21-08 Reporting service charge, and co-pay.**

(A) All reports shall be submitted in a format prescribed by BE for each facility for which that operator is responsible under a BOA and or BTOA. Should BE consider substantive changes in the format it prescribes, BE will actively participate with OVRC before implementation.

~~(B) BE may establish a system for submission for reports and records electronically, which may include a testing and evaluation period hereinafter referred to as the "Pilot Program."~~

~~(1) BE shall make e~~Electronic submission ~~is~~ mandatory for ~~any all~~ operators, ~~unless a temporary waiver, not to exceed a period of six months, of electronic submission is granted by BE.~~

~~(2) All operators transitioning from paper submission to electronic submission must transition by January 1 2016, licensed on or after January 1, 2010; the effective date of this rule;~~

~~(2) For operators licensed before the effective date of this rule January 1, 2010 electronic submission shall be optional. After completion of the pilot program and/or training the electronic submission will remain optional until such time as the operator declares participation in electronic submission, there is a change in law, or the governor issues a directive or executive order mandating electronic submission of reports and records;~~

~~(3) BE and OVRC shall actively participate in the pilot program which shall include the following:~~

~~(a) Operate for a maximum of six months. BE shall actively participate with the OVRC to further extend the pilot if necessary.~~

~~(b) Be voluntary except as set forth in paragraphs (B)(1) and (B)(4) of this rule;~~

~~(c) Require submission both electronically and paper format;~~

~~(d) Pilot participants shall invoice BE at the end of the pilot project for one hundred dollars for each full month of participation in the project;~~

~~(4) If BSVI does not receive an adequate number of volunteers it shall select ten per cent of the available operators for the required pilot; and~~

~~(5) A sixty day moratorium on penalties in paragraph (C) of this rule for untimely submission of the MOR or payments shall begin on the first day for mandatory electronic submittal. This penalty moratorium may be extended sixty days upon active participation between BSVI and the OVRC and applies only to electronic submittal.~~

~~(6B) An MOR submitted in either paper format or electronically completed in accordance with rule 3304:1-21-01 of the Administrative Code is due the on the last calendar day of the following month. For a paper MOR, if such day is Saturday, Sunday, or legal holiday, the due date is the next BSVI workday.~~

~~(1) An MOR submitted on a paper format prior to January 1, 2016 shall be completed in accordance with 3304:1-21-01. Any MOR submitted in paper format after January 1, 2016 shall not be accepted by BE and shall be returned to the operator for proper electronic submission.~~

~~(D) If an electronic MOR is required to be completed in accordance with rule 3304:1-21-01 of the Administrative Code due on the last calendar day of the following month. If such day is Saturday, Sunday, or legal holiday, the due date is the next BSVI workday.~~

~~(C) When reports or payments are unpaid, incomplete or late not submitted, submitted inaccurately, or submitted untimely, penalties shall be applied pursuant to rule 3304:1-21-09 of the Administrative Code. Pilot participation payment(s) shall be disallowed and penalties shall be applied pursuant to rule 3304:1-21-09 of the Administrative Code. Pilot participants shall not be penalized for erroneous or late submission through the pilot program but pilot participants are not excused from the obligations associated with submission of the MOR in a paper format.~~

Comment [CW3]: verify correct?

(D) Each month, each operator, shall submit the following:

(1) A service charge to BE which shall not exceed:

(a) Ten per cent of net proceeds up to one thousand dollars; plus

(b) Fifteen per cent of net proceeds over one thousand dollars up to two thousand five hundred dollars; plus

(c) Twenty per cent of net proceeds over two thousand five hundred dollars; plus

(2) Co-payment fee on maintenance and repair service calls, which include on-site labor and/or mileage charges, except in the following cases:

(a) For thirty calendar days after a piece of equipment is reassigned to a new location; or

(b) For thirty calendar days after an operator is reassigned to a new location.

~~(3) At the meeting immediately preceding October first each year, BE will collaborate with OVRC, and contingent on the availability of BE funds, shall determine for the next FFY the amount of:~~

~~(a) Co-payment per service call;~~

~~(b) Payments assuring a fair minimum of return pursuant to 34 C.F.R. Part 395;~~

~~(c) Benefits payments such as a pension fund, health insurance, paid sick leave, and paid vacation;~~

~~(d) Rates of reimbursement for actual and necessary expenses for OVRC representatives and alternates to attend regular meetings of the OVRC.~~

~~(e) Rates of compensation for OVRC representatives and OVRC alternate representatives for attendance at regular meetings of the OVRC.~~

(E) Full payment of the MOR charges shall be made to BE by the close of business the lastfourteenth calendar day ~~after the date on the invoice when filing a paper MOR~~ of the following month. If filing by paper and if such day is Saturday, Sunday, or legal holiday, the due date is the next BSVI workday. ~~For electronic MOR filing full payment of MOR charges are due the twenty-fourth calendar day of the month.~~

(F) If an MOR is outstanding forty-five days after its due date then BE shall prepare and send a written estimate of charges due and the operator shall be subject to penalty as described in rule 3304:1-21-09 of the Administrative Code.

(G) If the operator disagrees with a portion of the MOR charges prior to the due date of the disputed MOR charges, the operator shall:

(1) Submit a letter and supporting documentation describing the dispute to the BSVI director;

(2) The BSVI director shall review the documentation and investigate the dispute;

(3) Within thirty days of receipt of the dispute notification the BSVI director shall make a ruling as to whether the disputed charges should be rescinded by BE or paid by the operator;

(a) If the charges are to be rescinded, BE will make every effort to correct prior to the next MOR filing after the date of the ruling letter;

(b) If the charges are to be paid by the operator, the charges will be due in full within fourteen calendar days of the date of the ruling letter from the BSVI director;

(4) If the operator is dissatisfied with the director's decision, the operator may take such action as permitted in rule 3304:1-21-14 of the Administrative Code.

(5) If the operator is successful in such action the operator shall be reimbursed the amount of the disputed charges.

(H) Service charges received by BE shall be used pursuant to 34 CFR 395.9 , and may include assuring a fair minimum return to a displaced operator. The displaced operator receiving a fair minimum return must submit an invoice to BE for payment. A service charge shall not be levied against this amount nor shall it be shown on the MOR.

~~(I) BE shall submit benefit payments for eligible operators by March first.~~

~~(J) Any benefit payment shall be applied toward outstanding program debt.~~

#### 3304:1-21-09 Program penalties.

(A) Causes for penalty charges include: ~~reports required by BE that are incomplete, inaccurate or reports that are late;~~ payments of any type required by BE except payments required by the BGA, that are

unpaid, incomplete or late; or checks returned for insufficient funds. The following penalty charges and actions shall be implemented except when the operator submits ~~an untimely report or an unpaid, incomplete or late~~ payment due to ~~a verified admission for hospitalization of the operator, or the death of the operator or the operator's legal spouse, or when documented disaster or destruction of the facility or business records~~ a reported emergency which materially interferes with the operator's ability to file reports or make payments in a timely manner. Each operator will have the opportunity to utilize an emergency excuse not to exceed one use per federal fiscal year. In either instance ~~reports or~~ payments must be submitted within fifteen calendar days of the original due date. The progression of penalties shall apply on a per-facility basis.

(1) The first occurrence in any federal fiscal year an operator has cause for penalty as cited in paragraph (A) of this rule, the operator shall receive written notice from BSVI that subsequent occurrences during the federal fiscal year shall be cause for monetary penalties.

(2) The second occurrence in any federal fiscal year an operator has cause for penalty as cited in paragraph (A) of this rule, a penalty of one hundred dollars shall be added to the billing invoice for service charge. ~~If the operator upon the first imposition of this monetary penalty successfully completes a BE approved training the occurrence will be withdrawn. Upon the next occurrence the penalty shall be applied as a second occurrence and any subsequent occurrence shall progress to paragraph (A)(3) of this rule.~~

(3) The third occurrence ~~or more~~ and any subsequent occurrences in any federal fiscal year an operator has cause for penalty as cited in paragraph (A) of this rule, a penalty of two hundred dollars shall be added to the billing invoice.

(4) The fourth occurrence shall result in a two hundred dollar penalty, ~~corrective action plan~~ operator performance improvement plan, and additional record reviews as deemed appropriate. Such records reviews may be conducted by RSCOOD, its designee or agent. An operator performance improvement plan may be implemented as deemed necessary.

(5) In applying the above cited penalties, each occurrence in a federal fiscal year shall result in a progression of the penalties.

(6) In addition to the above cited penalties and actions, the operator shall be charged a fifty-dollar program service fee for payments returned for insufficient funds.

~~(B) The BSVI director may immediately suspend the BOA for up to fourteen calendar days which shall not be considered discipline;~~

~~(1) When the actions or inactions of the operator places BE in jeopardy of immediately losing the facility because of noncompliance with the permit or BGA;~~

~~(2) If the operator is absent from the location pursuant to rule 3304:1-21-04 of the Administrative Code causing the facility to be closed or temporarily closed in violation of the BGA;~~

~~(3) If the operator is indicted and, or engaging in criminal activity as defined in paragraph (M) of rule 3304:1-21-01 of the Administrative Code;~~

~~(4) If the actions or inactions of the operator cause or allow conditions to exist, which present a clear and present danger to the operator or others.~~

~~(C) The BSVI director shall terminate the BOA for the following reasons:~~

~~(1) Failure to pay any fee required through the BOA by close of business on the fifteenth calendar day after receipt of the thirty day notice. Copies of the notice shall be sent to the area OVRC representative and alternate;~~

~~(2) Failure of an operator to submit an MOR or inventory at the designated BE location by close of business on the fifteenth calendar day after receipt of the thirty day notice. Copies of the notice shall be sent to the area OVRC representative and alternate;~~

~~(3) Termination of the BGA, whether voluntary or involuntary;~~

~~(4) Revocation or suspension of the operator's license in accordance with rule 3304:1-21-13 of the Administrative Code;~~

~~(5) BE approval of a thirty day written notice of resignation by the operator to BE;~~

~~(6) The date on which the closing inventory required in rule 3304:1-21-07 of the Administrative Code is conducted;~~

~~(7) As otherwise listed in Chapter 3304:1-21 of the Administrative Code.~~

~~(B~~D~~)~~ Upon certification to the attorney general's office for past due program charges, BE may revoke as operator's license in accordance with rule 3304:1-21-13 of the Administrative Code unless paid in full within one hundred twenty days of certification.

~~(C~~E~~)~~ Any unpaid program charges more than forty-five days past due shall have a twenty-five per cent penalty added to the total of unpaid program charges.

#### 3304:1-21-10 Operator Performance Improvement Plan.

~~(A)~~ ~~(A)~~ BE shall inform an operator in writing;

~~(1)~~ when there is evidence that demonstrates a pattern an operator is managing a facility in violation of the provisions of Chapter 3304:1-21 of the Administrative Code with exception of paragraph (A)(1), (A)(2), (A)(3), or (A)(4) of rule 3304:1-21-04 of the Administrative Code;

~~(A)~~ ~~(2)~~ what actions the operator must take to cure the violations and the timeframe to cure the violations.

~~(B)~~ If the operator does not cure the violations within the outlined timeframe then the BSVI Director shall terminate the BOA.

(C) An operator shall not be afforded the opportunity to participate in a performance improvement plan when an operator's actions or inaction is determined to be subject to discipline as defined in (A) of Chapter 3304:1-21-13.

(D) An operator shall not be afforded the opportunity to participate in a performance improvement ~~action~~ plan when an operator's action or inaction is determined to be subject to suspension or termination of a BOA as defined in 3304:1-21-09.

~~(1) The operator shall, within thirty days of being so informed, submit to BE a detailed written plan of corrective action. BE shall offer assistance and the area OVRC representative may assist the operator in preparing a plan of corrective action. The BE designee will review and issue a determination within ten working days of the due date as to whether the plan is acceptable.~~

~~(2) An operator, who does submit an approved plan of corrective action shall have one hundred twenty days from the date on which the plan was approved to correct the noted deficiencies. Failure to correct the noted deficiencies shall result in the termination of the BOA for that facility on the one hundred twenty-first day. Plans of corrective action shall terminate upon the correction of all noted deficiencies, or the expiration of one hundred twenty days after the plan of corrective action is approved, whichever first occurs. If the corrective action plan is a result of a record review finding, the operator may be subject to additional record reviews for up to one year after the issue was cured.~~

~~(3) An operator who does not submit a plan of corrective action or whose plan is not approved, shall have sixty days from the date on which the plan was due to correct all noted deficiencies. Failure to correct the noted deficiencies shall result in the termination of the operator's BOA for that facility on the sixty-first day.~~

~~(BE) BE shall inform an operator in writing when there is evidence that demonstrates an operator is managing a facility in violation of the provisions of paragraph (A)(1), (A)(2), (A)(3), or (A)(4) of rule 3304:1-21-04 of the Administrative Code.~~

(1) The operator shall within thirty calendar days of being so informed submit to BE a detailed written plan of corrective action. BE shall offer assistance and the area OVRC representative may assist the operator in preparing a plan of corrective action. The BE designee will review and issue a determination within ten working days of the due date as to whether the plan is acceptable.

(2) An operator who does submit an approved plan of corrective action shall have one hundred twenty days from the date on which the plan was approved to successfully complete the corrective action plan. When completing the corrective action plan if a qualified applicant who meets the preferences of paragraph (A)(3) or (A)(4) of rule 3304:1-21-04 of the Administrative Code is identified the operator shall hire that individual. Plans of corrective action shall terminate upon the correction of all noted deficiencies, or the expiration of one hundred twenty days after the plan of corrective action is approved, whichever first occurs. Failure to fully demonstrate actions to correct the noted deficiencies shall result in the termination of the BOA for that facility on the one hundred twenty-first day.

(3) An operator, who does not submit a plan of corrective action or whose plan is not approved, shall have sixty days from the date on which the plan was due to correct all noted deficiencies. Failure to correct the noted deficiencies shall result in the termination of the operator's BOA for that facility on the sixty-first day.

(CF) BE shall actively participate with the local selection panel in the implementation, monitoring, and assessment of a corrective action plan:

(1) Prior to an operator being notified of placement on ~~an operator performance improvement corrective action~~ plan;

(2) As a resource in the development of the ~~plan of operator performance improvement corrective action~~ plan;

(3) Providing updates on plan progress;

~~(4) Determining if the plan of corrective action has been satisfied by majority vote of the selection panel. If a member of the selection panel has a personal interest or conflict of interest in relation to the operator or facility that person shall voluntarily withdraw from the selection panel.~~

(DG) Nothing in this rule modifies rule ~~3304:1-21-09~~ 3304:1-21-06 of the Administrative Code regarding the immediate temporary suspension of the BOA and loss of a facility as defined in said rule.

#### 3304:1-21-11 Authority and responsibility of BE.

BSVI has authority and responsibility for the BE pursuant to 34 C.F.R 395 and sections 3304.16 and 3304.28 of the Revised Code including, but not limited to:

(A) Actively participate with the OVRC in major administrative decisions and in policy and program development;

(B) Make every reasonable effort to provide all licensees with information, forms, BE computer programs and reports in an accessible format as defined in paragraph (A) of rule 3304:1-21-01 of the Administrative Code;

(C) Make every reasonable effort to schedule meetings and hearings with licensees in an accessible facility;

(D) Negotiate and enter into agreements, settlement agreements or contracts;

f.

(E) Seek and secure suitable vending facilities;

(F) Have the right of access to any facility and/or facility storage space for purposes of operation, inspection, inventory, verification, and/or recovery;

(G) Establish training programs for entry and upward mobility;

(H) Apply rules and policy in a uniform manner;

(I) Assist and train licensees ~~concerning legal, contractual, and policy compliance obligations;~~

(J) Market and promote BE;

(K) Provide to each licensee upon request access to all program and financial data of BSVI relevant to the operation of the BE program, including quarterly and annual financial reports;

(L) Upon an operator's request Refer qualified candidates whenever possible to operators with personnel vacancies;

(M) Perform periodic inspections and prepare a written report on a form prescribed by BSVI;

(N) Perform an annual operator performance appraisal, annual budget projection, and ~~such~~-facility visits; ~~as required to document management and operational deficiencies and to support plans of corrective action.~~

(O) Upon availability of funds, BE shall submit a benefit payment to eligible operators by March first after OVRC recommendation to provide payout. Any benefit payment shall be first applied toward outstanding program debt, prior to payment to operator.

#### 3304:1-21-12 Ohio vendors representative committee.

BE and OVRC will determine biannually at the meeting preceding October first, seven equitably representative electoral districts for the purpose of electing Ohio vendors representative committee (OVRC) representatives and alternates. The districts are as follows: Columbus, Zanesville, Akron-Canton, Cleveland, Toledo, Dayton, and Cincinnati.

(A) The OVRC shall be composed of seven operators who are party to a BOA and have been elected by the operators assigned to the same electoral district. Each member shall represent all operators assigned to the electoral district. An alternate representative who is party to a BOA shall also be elected for each electoral district.

(1) A representative and an alternate from each district shall be elected for a two-year term commencing on July first of the year of their election.

(2) If a representative is absent from a meeting, the alternate shall participate in that meeting with the full rights of the representative.

(3) If a representative is unable to complete a term, or ceases to be an operator, or moves from that electoral district, the alternate shall complete the term and a new alternate shall be elected to complete the original alternate's term, unless there are ninety days or less remaining in the term. If an alternate is unable to complete the term, or ceases to be an operator, or moves from that electoral district, or

assumes the representative's position, a new alternate shall be elected to complete the original alternate's term, unless there are ninety days or less remaining in the term.

(B) The committee representatives and alternates shall be elected as follows:

(1) Elections shall be held for OVRC representatives and alternates of Akron-Canton, Cleveland, and Cincinnati in even numbered years and for Columbus, Zanesville, Toledo, and Dayton in odd numbered years.

(2) On or before April thirtieth in the year in which the representative is to be elected, BE shall conduct a nominating meeting.

(3) An operator must be present at this meeting to be nominated as a representative or alternate unless prior approval is granted by BE. Only operators may nominate and vote.

(4) If only one candidate is nominated, that operator shall be declared the winner by acclamation.

(5) If more than one candidate is nominated, BE shall prepare a ballot listing all the candidates and shall distribute by mail a copy to each operator in the area within fifteen calendar days of the nominating meeting.

(6) The ballot shall be counted only if it is marked for one candidate and received on or before the fifteenth calendar day from the date the ballot was ~~mailed~~ distributed. All ballots received, which are eligible to be counted, The ballot will not be counted until after that date.

(7) The candidate receiving the most votes shall be the representative and the candidate receiving the next greatest number of votes shall be the alternate. In case of a tie, the representative shall be the operator with the most seniority. The alternate shall be the operator who has the next greatest amount of seniority.

(8) Within fifteen days of counting the ballots, BE shall inform each licensee within the area, by mail, the results of the election.

(9) The operators of an established OVRC electoral district may petition the bureau to recall the current elected representative or alternate for misconduct or neglect of duty.

(a) The petition must be signed by fifty-one per cent of ~~the all~~ eligible ~~voting~~ operators of the given OVRC electoral district and shall clearly specify the charges brought against the elected representative or alternate.

(b) ~~BE-OVRC shall determine~~ ~~shall verify~~ that just cause does exist for a recall ballot. BE shall send by mail a recall ballot to the eligible ~~voting~~ operators. Two-thirds of the eligible ~~voting~~ operators of the given OVRC electoral district are required to return a ballot with an affirmative vote in order to recall a representative or alternate. The results of the ballots shall be effective immediately.

(c) If the representative is recalled and a vacant position exists, the alternate will become the representative and the bureau will conduct an election within the next ninety days to elect a new

alternate. The one exception will be if the recall vote occurs in the month prior to the regular election for that area, in which case no special election for an alternate will be held.

(d) If the alternate is recalled, a special election shall be held to nominate and elect a new alternate according to paragraph (B)(4) of this rule.

(C) The committee shall establish bylaws outlining how meetings shall be conducted and how officers will be elected and will file the bylaws with BE within one week of adoption.

(D) Special elections to fill an unexpired term of a representative or an alternate, as stated in paragraph (B)(3) of this rule, shall be conducted in the following manner:

(1) BE shall conduct a nominating meeting as soon as is reasonably possible.

(2) An operator must be present at this meeting to be nominated as a representative or alternate unless prior written approval is granted by BE. Only operators may nominate and vote.

(3) If only one candidate is nominated, that operator shall be declared the winner by acclamation.

(4) If more than one candidate is nominated, BE shall prepare a ballot listing all the candidates and shall distribute, by mail, a copy to each operator in the area within fifteen calendar days of the date of the nominating meeting.

(5) The ballot shall be counted only if it is marked for one candidate and received within thirty calendar days from the date the ballot was distributed. All ballot received, which are eligible to be counted, will not be counted until after the date of the nominating meeting.

(6) The candidate receiving the most votes shall complete the original term. In case of a tie, the declared winner shall be the candidate with the most seniority. The operator shall complete the original term.

(7) Within forty-five calendar days of the nominating meeting, BE shall inform each licensee within the area, by mail, of the election results.

(8) Elections may be conducted electronically if agreed upon by OVRC and BE.

(E) At the meeting immediately preceding October first each year, BE will collaborate with OVRC, and contingent on the availability of BE funds, shall determine for the next FFY the amount of:

(1) Co-payment per service call;

(2) Payments assuring a fair minimum of return pursuant to 34 C.F.R. Part 395;

(3) Benefits payments such as a pension fund, health insurance, paid sick leave, and paid vacation;

(4) Rates of reimbursement for actual and necessary expenses for OVRC representatives and alternates to attend regular meetings of the OVRC.

(5) Rates of compensation for OVRC representatives and OVRC alternate representatives for attendance at regular meetings of the OVRC.

~~(F)~~ The BSVI director, or designee, shall meet with the committee. Special meetings of the committee shall be convened within fifteen days of the written request of the majority of its members or upon the written request of the BSVI director. Committee members shall bear the cost of their expenses related to special meetings. BE shall bear the cost of actual and necessary expenses of committee members for attendance at regular ~~meetings~~ meetings.

~~(G)~~ The state OVRC shall actively participate with BSVI in major administrative decisions and policy and program development with respect to BE. Such participation shall be as follows:

(1) BE shall, except as set forth in paragraph (F) ~~(14)(d)(iv)(a))~~ of this rule, provide OVRC advance notice of the following issues affecting BE and upon which BE desires to take action, including:

(a) Decisions concerning contracts with BE vendors and suppliers;

~~(b) Creation or~~ substantive changes to forms operators complete and/or sign;

(c) Material changes in services provided to licensees;

(d) Settlement agreements that can be entered into by the BE manager which:

(i) Will result in the payment of program funds;

(ii) Will result in forfeiture of program funds;

(iii) Will result in the alteration of an operator's records with respect to selection criteria;

(iv) Address issues which BE and OVRC have a requirement to actively participate under paragraph ~~(F)~~ (G) of this rule;

(e) Identification of suitable sites;

~~(fg) Selection of temporary operators~~ Extension of BTOA beyond six months;

~~(gh) Opening, closing, or posting existing facilities;~~

~~(hg) Reconfiguration of a vacant facility prior to posting; When the merger of two facilities results in greater than seventy five per cent of the statewide average net proceeds. If the merger results in seventy five per cent or less of the statewide average net proceeds then the local OVRC will make the determination;~~

~~(hi) Major reductions in funding of BE;~~

(~~ki~~) Known proposals to amend statutes, administrative rules or written policies affecting licensees;

(~~kl~~) Disputes with grantors that may result in the loss of a facility.

(2) BE shall provide the OVRC members information including, but not limited to, documents or other material necessary to understand the issues that require active participation with as much advance notice as reasonably possible for the next regularly scheduled OVRC meeting agenda.

(3) OVRC shall provide the BSVI director information including but not limited to, documents or other material necessary to understand the issues with as much advance notice as reasonably possible for the next regularly scheduled OVRC meeting agenda.

(4) BE shall not take any action on a matter requiring active participation of OVRC without first securing the active participation of the OVRC, except:

(a) BE may take action prior to securing active participation of the OVRC if an emergency occurs. In cases of emergency, the BSVI director shall make every effort to consult with the OVRC chair or vice chair prior to taking action, and shall, when such an emergency has abated, provide to the OVRC chair a written description of the emergency and the action taken.

(b) BE may take action on issues requiring active participation if OVRC does not respond within a reasonable time.

(5) BE may invite the OVRC to attend meetings with third parties concerning BE issues, programs and policies, and all meetings at which decisions will or may be made concerning any matter that would require the active participation of OVRC.

(6) Nothing in this rule prohibits the director of BSVI from administering the program and making any and all ordinary decisions regarding the administration of the program.

(7) OVRC chairperson or designee shall:

(a) Prepare an agenda of topics to be discussed by the OVRC at each meeting;

(b) Communicate to BE the written recommendations of the OVRC within fifteen business days following such meetings. These recommendations shall be considered by BE before any decisions are made except in a situation requiring the immediate action of the director;

(c) Receive and transmit to the state licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

~~(d) Participate in the operator selection system pursuant to rule 3304:1-21-03 of the Administrative Code;~~

(e) Participate, with BSVIBE, in developing training and re-training programs;

(f) Sponsor, with the assistance of [BSV/BE](#), meetings for licensees.

~~(98) The OVRC chair, or designee, shall serve on the location selection panel when an OVRC electoral district position is vacant.~~

#### 3304:1-21-13 Disciplinary procedures.

(A) BSVI may deny, revoke, or suspend a license upon proof that the licensee or applicant:

(1) Has engaged in fraud, material deception, or material misrepresentation;

(2) Has had the BOA terminated at least two times pursuant to paragraphs ~~(EG)~~(1), ~~(EG)~~(2), ~~(EG)~~(4) and ~~(D)~~ of rule ~~3304:1-21-09~~ [3304:1-21-06](#) of the Administrative Code;

(3) Is convicted of criminal activity as defined in paragraph (M) of rule [3304:1-21-01](#) of the Administrative Code;

(4) Carries or possesses a firearm or concealed weapon in violation of law;

(5) Is under the influence of alcohol, or illegal substances, or abused controlled substances at the work place or otherwise fails to maintain a drug-free work environment;

(6) Is determined mentally incompetent;

(7) Cannot perform an operator's duties;

(8) No longer meets the criterion of paragraph (D) of rule [3304:1-21-01](#) of the Administrative Code. The BSVI director shall require that a licensee submit to a vision exam and submit evidence of said vision exam performed within the past three months by an ophthalmologist selected and paid for by BSVI.

(B) The BSVI director shall notify the licensee and copy OVRC of the proposed action, basis for the action, and the hearing process pursuant to Chapters [119.06](#) to [119.09](#) of the Revised Code.

#### 3304:1-21-14 Grievances.

(A) A licensee or authorized representative may grieve in writing any action taken directly against the grievant or an action or inaction that affects the administration of BE. The grievance must be received by the BE manager or designee within forty-five calendar days of when the date the grievant became or reasonably should have become aware of the action taken. Only OVRC, by a majority vote, may grieve in writing within sixty-five calendar days any action or inaction it determines violates the requirement to actively participate as outlined in paragraph (F) of rule [3304:1-21-12](#) of the Administrative Code. Licensees may not grieve any failure of BE to comport with paragraph (F) of rule [3304:1-21-12](#) of the Administrative Code. Licensees may not grieve employment decisions concerning BE employees, or purely internal ministerial decisions of BE.

(1) The BE manager shall contact the grievant after notice of the grievance to determine if the grievance can be resolved informally. ~~The grievant shall be provided with an An~~ informal meeting ~~date shall be held~~

within sixty calendar days of the receipt of the grievance. The BE manager or designee shall provide a written summary of the informal meeting to the grievant, the BSVI director or designee, within thirty calendar days of the informal meeting with notice of appeal rights pursuant to Chapters [119.01](#) to [119.09](#) of the Revised Code.

(2) If the grievant is dissatisfied with the outcome of the informal meeting then the grievant may request a hearing pursuant to Chapter [119.06](#) of the Revised Code.

(3) In any case, should a grievance remain unresolved after one hundred twenty calendar days from filing, it will be forwarded to the formal hearing level.

(B) Requests for hearings pursuant to Chapters [119.01](#) to [119.09](#) must be in writing and received by the director of BSVI within fifteen calendar days of the date of receipt of the informal decision. The hearing will be held before hearing officers on contract with BSVI. BE shall invite OVRC to send one member to attend interviews when hearing officers are recruited.

(C) A stenographic record of the hearing shall be made by a court reporter. A grievant requesting a transcript from the court reporter shall be responsible for the cost.

(D) Time limits established in this rule may be extended by mutual agreement of the parties.

#### **3304:1-21-15 Method of notice for public hearings.**

(A) BSVI shall conduct a public hearing for administrative rules in this chapter which are filed in compliance with Chapter 119. of the Revised Code.

(B) At least thirty days before the public hearing, BSVI shall prepare a notice of public hearing, which includes all of the following:

(1) A statement that it is BSVI's intention to propose, amend, or rescind rules.

(2) The date, time, and place of the hearing.

(3) A general statement of the subject matter to which the proposed rule(s), amendment(s), or rescission(s) relate.

(4) The reason for proposing, amending, or rescinding the rule(s).

(5) A statement that the rule(s) shall be available for review, free of charge, at the office of the BSVI director.

(6) A statement that the notice of the public hearing and/or the full text(s) of the rule(s) is available from the office of the BSVI director by any person who requests it and pays a fee not to exceed the cost of copying and mailing.

(7) A statement that the public hearing shall be conducted in accordance with Chapter 119. of the Revised Code.

(C) At least thirty days before the public hearing for administrative rules for this chapter, BSVI shall:

(1) Mail, by first-class postal mail or electronic mail, the notice of public hearing to the operators and to radio reading services.

(2) Submit the notice of public hearing to the legislative service commission for publication in the register of Ohio.