

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

COMMISSION FOR THE BLIND

VENDING FACILITY PROGRAM

(By authority conferred on the director of the department of labor and economic growth by sections 1, 5, and 16 of 1978 PA 260 and Executive Order Nos. 1996-2 and 2003-18, being §393.351, 393.355, 393.366, 445.2001, and 445.2011 of the Michigan Compiled Laws)

R 393.1 Definitions.

Rule 1. (1) As used in these rules:

(a) "Academic period" means a semester, trimester, quarter, or other college or university unit of study.

(b) "Act" means 1978 PA 260, as amended, being MCL 393.351.

(c) "Active participation" means the process whereby the elected operators' committee and its subcommittees, the commission board, and commission staff cooperate in the development and implementation of major administrative decisions and policy as well as program development, as prescribed in the Randolph Sheppard act of 1936, as amended, 20 U.S.C. §107 et seq. and the act.

(d) "Administrator" means the program administrator of the business enterprise program.

(e) "Bid" means the process whereby a licensee or a potential licensee records on the business enterprise program telephone system his or her desire to transfer to, or begin operation of, an available location.

(f) "Bid line" means a telephone line that contains a recorded message of all locations which are available during an identified time frame.

(g) "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages, including hot meals, primarily through the use of a line where the customer serves himself or herself from displayed selections. A cafeteria may be fully automatic or may have limited table service. Table or booth seating facilities are always provided.

(h) "Combined cafeteria/snack bar" means a facility that combines the features of a cafeteria with the features of a snack bar.

(i) "Commission" means the Michigan commission for the blind.

(j) "Commission board" means the policy-setting body for the Michigan commission for the blind.

(k) "Committee" means a group of members which is elected to represent all vending facility operators and which is created under R 393.53.

(l) "Dry stand" means a vending facility that does not sell liquids.

(m) "Federal properties" means a building, land, or other real property owned, leased, or occupied by a department, agency, or instrumentality of the United States, including the department of defense and the United States postal service, or an instrumentality wholly owned by the United States.

(n) "Hearings office" means the office within the department charged with the responsibility of conducting fair and impartial hearings.

(o) "Hearings officer" means a person designated to conduct hearings and issue proposed decisions on behalf of the commission pursuant to 1969 PA 306, MCL 24.201.

(p) "Highway vending" means a vending facility that consists of 1 or more state of Michigan highway rest areas or welcome centers.

(q) "Initial merchandise inventory" means merchandise necessary for establishing a licensee in a vending facility, and shall include bill changer change and coin mechanism change.

(r) "License" means a written instrument that the commission issues to a blind person that authorizes the person to operate a vending facility on federal, state, or other property.

(s) "Licensee" means a blind person who the commission licenses to operate an assigned vending facility.

(t) "Management services and supervision" means and includes inspection, quality control, consultation, accounting, regulating, in service training, and related services provided on a systematic basis provided to support and improve Randolph-Sheppard small business enterprises operated by blind individuals. "Management services and supervision" does not include routine services or costs that pertain to the ongoing operation of an individual facility after the initial establishment period.

(u) "Mandated" facility means a facility in which blind persons are granted priority to operate concessions under the Randolph-Sheppard act of 1936, as amended, 20 U.S.C. §107 et seq. and the act.

(v) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities and any vending machine or other income accruing to operators after deducting the cost of the sale and other expenses and excluding set aside charges required to be paid by operators.

(w) "Net profit" is the gross income to the operator before personal income tax.

(x) "Operating costs" means the cost of all of the following:

(i) Products sold.

(ii) Employees' wages, taxes, and compensation.

(iii) An operator's portion of repair.

(iv) Sales taxes.

(v) Operating insurance.

(vi) Supplies.

(vii) Business telephone charges directly related to the vending facility.

(viii) The renting or leasing of commission-approved equipment or space, which may include utilities.

(ix) Actual vehicle mileage or actual vehicle expenses, documented in a log for that purpose, which are directly related to the operation of the vending stand facility, which are deemed necessary for the location, and which are identified in the agreement, and parking and tolls directly related to the operation of the vending stand facility. The expenses shall be documented by adequate records or evidence. The rate of reimbursement shall be established by the commission board with the active participation of the committee. Vehicle mileage between the licensee's home and the vending facility is not an operating expense.

(x) Dues for professional and trade organizations.

(y) "Other property" means property which is not required by state or federal law to house a vending stand facility and which is property on which vending facilities are established or operated through the use of any funds derived, in whole or in part, directly or indirectly, from the operation of any mandated vending facility.

(z) "Permit" means the official approval or authority which is given to the commission by a department, agency, or instrumentality that is in control of the maintenance, operation, and protection of federal property or by a person who is in control of other property and which authorizes the commission to establish a vending facility.

(aa) "Program" means all the activities of the commission related to business enterprise program vending facilities on federal, state, and other properties.

(bb) "Promotional agent" means the commission employee occupying the Michigan department of civil service position that performs the duties described in R 393.21.

(cc) "Satellite" means a site that is added to a licensee's primary vending facility to assist the profitability of the primary vending facility. A satellite is not profitable enough to meet the current requirements for a self-supporting facility.

(dd) "Self-employment" means an occupation where an individual does not receive a W-2 form and is required to file an internal revenue service schedule "C" (sole proprietorship form).

(ee) "Set-aside funds" means funds that accrue to the commission from an assessment against the net proceeds of each vending facility in the state's program.

(ff) "Snack bar" means a vending facility that is engaged in selling limited lines of refreshment and derives more than 5% of its gross sales from the sale of coffee or other beverages. A snack bar may sell prepared food items necessary for a light meal service such as soups, salads, and sandwiches. Food may be prepared off the premises. A snack bar may have no or limited on-site food preparation.

(gg) "Stand type" means any of the following types of vending facility:

- (i) Dry stand.
- (ii) Snack bar.
- (iii) Vending machine.
- (iv) Cafeteria.
- (v) Combined cafeteria/snack bar.
- (vi) Vending machine route.
- (vii) Highway vending.

(hh) "State property" means a business enterprise program facility in a building or on a property owned or occupied by the state, except for a concession operated in connection with any of the following:

- (i) The state fair.
- (ii) The use of state fair grounds.
- (iii) Any state educational institution.
- (iv) A state penal institution.
- (v) Military establishments and armories.
- (vi) A state park.

(ii) "Unassigned vending machine income" means the funds that accrue from vending machines on federal, state, and other properties, for which there is no blind licensee and which accrues to the commission.

(jj) "Vending facility" means an automatic vending machine, cafeteria, snack bar, cart service, catering, coffee service, shelter, counter or any other appropriate auxiliary service or equipment as the commission may prescribe by rule as being necessary for the sale of articles or services described in 1978 PA 260, as amended, being §393.351 et seq of the Michigan Compiled Laws and which may be operated by a blind licensee.

(kk) "Vending machine route" means a vending facility that consists of vending machines situated in disparate physical locations. None of the vending machine route component parts can function as a vending facility.

(ll) "Vending machine facility" means a vending facility that has a majority of its sales generated from coin or currency-operated machines that dispense articles or services.

(2) A term defined in the act has the same meaning when used in these rules.

History: 2004 AACCS.

R 393.2 Program administration.

Rule 2. The commission, with the active participation of the committee, shall administer a vending facility program for the blind on federal, state, and other properties.

History: 2004 AACCS.

R 393.3 Program eligibility.

Rule 3. (1) A blind individual is eligible for the vending facility program and is eligible for program training and assignments if any of the following provisions apply:

(a) The person is unemployed.

(b) The person is earning a weekly wage less than or equal to 40 hours times the current federal minimum wage.

(c) The person is employed in a program vending facility.

(d) The person is an active rehabilitation client whose vocational objective is placement in the program, whose name is placed on the potential licensees' list, and who takes employment while waiting to be placed in the program. In this case, the potential licensee remains on the potential licensees' list with full rights as a potential licensee until either of the following occurs:

(i) The person is awarded a program vending facility.

(ii) The person elects to have his or her name removed from the potential licensees' list.

(2) After 3 years on the potential licensees' list, an individual shall be retrained before being awarded a license.

(3) An individual who does not meet the requirements contained in subrule

(1) of this rule is not eligible for program training or placement. All of the following conditions also render an individual ineligible for program training or placement:

(a) A former program licensee who owes money to the commission is not eligible until the debt is paid in full.

(b) A former program licensee who owes money to suppliers or owes state or federal taxes is not eligible until the former licensee's debts are paid in full.

(c) A former program licensee who owes money for an inventory shortage is not eligible until the debt is paid in full.

(d) A licensee who has a repayment agreement in good standing in effect at the time these rules take effect is exempt from subrule (3) of this rule. However, if the licensee's repayment agreement is violated, then the terms and conditions of this subrule shall apply.

History: 2004 AACCS.

R 393.4 Client interview; referral for alternative services; evaluation; testing; training; remedial training.

Rule 4. (1) If a client and counselor decide that the vocational objective of vending facility licensure fits the client's skills and interests, then the counselor shall request an interview with a member of the program staff. The request for an interview shall be made to the program trainer.

(2) If a candidate is not considered to be eligible to be a vending facility licensee by the program trainer, then the candidate shall be referred to the counselor for alternative services. The candidate shall satisfy all of the following criteria:

(a) Be interested in meeting the public on a daily basis.

(b) Understand the concept of customer service.

(c) Understand appropriate business attire.

(d) Be willing to relocate.

(3) A candidate shall not be admitted to the program without a satisfactory interview.

(4) A vending facility training evaluation is required for a candidate for the program. A potential licensee shall possess competency as determined by the commission board with active participation from the committee.

(5) A candidate for the program, including a candidate who intends to train for cafeteria operation, shall attain the competencies determined by the board with the active participation of the committee and set forth and published by the board and shall avail himself or herself of the vending facility training and on the job training.

(6) If a student is unable to attain a satisfactory evaluation, then a counselor shall offer assistance in obtaining remedial training to upgrade skills. If the student has physical limitations that hinder the completion of the evaluation, and it is determined that he or she can handle the physical requirements associated with operating a facility, then the counselor shall include documentation in the evaluation requesting a waiver of the orientation and mobility requirement or other requirement not attainable by the client due to a disability and not essential to carrying out the responsibilities of a licensee.

History: 2004 AACCS.

R 393.5 Establishment of program entrance requirements; candidate evaluation.

Rule 5. (1) The commission board, with the active participation of the committee, shall establish and set forth entrance requirements for the program.

(2) Each candidate for the program shall be evaluated in all of the following areas:

- (a) Reading, mathematics, and communications.
- (b) Orientation and mobility.
- (c) Daily living skills.

History: 2004 AACCS.

R 393.6 Vending facility training.

Rule 6. (1) Vending facility training shall include both classroom training and on the job training.

(2) The course content of the classroom training shall include all of the following topics:

- (a) A history and overview of the program.
- (b) The Randolph-Sheppard program and all applicable laws, regulations, and policies.
- (c) Methods of managing a vending stand, including all of the following:
 - (i) Sanitation.
 - (ii) Bookkeeping.
 - (iii) Product management.
 - (iv) Marketing skills and techniques.
 - (v) Customer relations skills.
 - (vi) Program reporting requirements.
 - (vii) Applicable employer laws, rules, and regulations.
- (d) Equipment certification.

(3) A student shall demonstrate that he or she is in compliance with the guidelines regarding dress as set forth in the vending stand training syllabus and training contract.

(4) Tests shall be administered in each area specified in subrule (2) of this rule. A passing grade for a test is not less than 75%.

(5) A candidate is required to pass the national restaurant association education foundation test and the applied food service sanitation course of the Michigan department of community health, with a passing grade of not less than 75%.

History: 2004 AACCS.

R 393.7 Vending facility on the job training.

Rule 7. (1) A client shall successfully complete and pass on the job training before being awarded a license. If the client does not pass the initial on the job training, then he or she may be reassigned to a second on the job training. However, if the client fails the second on the job training, then he or she is terminated from the vending facility training program and cannot be placed on the potential licensee list.

(2) A candidate who does not report for training and who cannot reasonably explain the absence shall be considered by the trainer to have failed on the job training.

(3) A candidate who attempts to defraud the commission or who steals money or merchandise from the trainer shall be summarily suspended from training. The commission will conduct an investigation. If the investigation substantiates the fraud or theft, then the candidate will be expelled from the program and may not be considered for the program for a period of 5 years. A candidate who disagrees with the finding of the investigation can appeal the finding through a process established under the vocational rehabilitation act of 1973, as amended in 1992, 29 U.S.C. 31-42 §100-803 et seq.

(4) The commission board, with the active participation of the committee, shall establish standards for on the job training.

(5) A licensee who serves as an on the job trainer shall be certified through a training program provided by the commission.

(6) A licensee certified as an on-the-job trainer has all of the following responsibilities:

(a) To ensure that all components of the on the job training assessment are evaluated and that the trainee is given the opportunity to independently demonstrate proficiency in all areas.

(b) To provide the full amount of time for on the job training as determined by the commission board with the active participation of the committee.

(c) To properly complete and submit an on the job training evaluation during the last day of on the job training. On the job training reports are a part of the vocational rehabilitation file and as such are governed by the vocational rehabilitation confidentiality requirements.

(7) A trainee in on the job training has both of the following responsibilities:

(a) To demonstrate proficiency in all areas covered in the on the job evaluation.

(b) To complete the amount of training time required for on the job training as determined by the commission board with the active participation of the committee.

History: 2004 AACCS.

R 393.8 Cafeteria facility training.

Rule 8. (1) The commission board, with the active participation of the committee, shall establish and publish, in the business enterprise program operations manual, the requirements for cafeteria facility training. To enter into the program as a cafeteria vending facility licensee, a person shall meet all of the established requirements.

(2) The requirements for cafeteria facility training are as follows:

(a) College level classes in food service. The commission board, with the active participation of the committee, shall establish and publish, in the business enterprise program operations manual, the college level classes required.

(b) Vending facility training.

(c) Cafeteria on the job training.

(d) Vending facility on the job training.

History: 2004 AACCS.

R 393.9 Candidate referral packet.

Rule 9. A rehabilitation counselor shall refer a candidate for the program to the administrator by means of a referral packet, which shall consist of all of the following:

- (a) Employment profile data, which may include the following:
 - (i) Purposes and goals of the referral.
 - (ii) Prior experience in food service.
 - (iii) Education and work history.
 - (iv) Selected vocational goals.
- (b) A diagnostic eye examination report indicating that the candidate is legally blind and whether there is a possibility of improved vision in the future.
- (c) On the job training reports.
- (d) A classroom training report.
- (e) A certificate of completion of the national restaurant association education foundation sanitation course.
- (f) A certificate of passage of the Michigan community public health agency sanitation test.

History: 2004 AACCS.

R 393.10 License issuance and eligibility requirements.

Rule 10. A license shall be issued only to a person who, as determined by the commission, meets all of the following requirements:

- (a) Is blind as certified by a licensed ophthalmologist or optometrist. If a licensee obtains corrective surgery or his or her vision improves through other means, then the licensee shall be required to submit a new eye exam.
- (b) Is not less than 18 years of age.
- (c) Is certified by the commission as qualified to operate a vending facility.
- (d) Does not owe money under the circumstances described in R 393.3(3).

History: 2004 AACCS.

R 393.11 Licensing procedure.

Rule 11. (1) To be licensed, a person shall comply with all of the following requirements:

- (a) Be certified by the commission as qualified to operate a vending facility.
 - (b) Be placed on the potential licensee list.
 - (c) Bid on a facility.
 - (d) Be awarded a facility.
 - (e) Sign an inventory for the facility.
 - (f) Successfully operate a facility for 6 months.
- (2) A license is valid on the date the potential licensee successfully completes a 6-month probationary period in the vending facility and is valid for an indefinite period

but subject to rules regarding suspension or termination, as defined in R 393.13, R 393.14, R 393.15, and R 393.16. The license is subject to suspension or termination if, after affording the licensee an opportunity for a full evidentiary hearing, the state licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and the conditions of the agreement with the licensee.

(3) A license may be voluntarily surrendered by a licensee.

(4) Licensee seniority commences on the first day of the probationary period. Seniority is awarded retroactively at the end of the successfully completed probationary period. Seniority continues to accrue uninterrupted unless the license is suspended or revoked or unless 7 or more days elapse between the implementation of a current vending facility agreement and a new vending facility agreement. If 7 or more days elapse, then seniority is interrupted until the new vending facility agreement is signed by both the licensee and the commission.

(5) Before accepting another facility, a licensee shall operate his or her facility for not less than 6 months.

(6) For seniority purposes, ranking on the potential licensee list is based upon the first business day after completion of training, as shown by the documents submitted. If a tie occurs, then the following criteria are used to break the tie in a manner determined by the commission board, with the active participation of the committee:

(a) Rank-ordered scores from the educational foundation of the national restaurant association food service sanitation course exam.

(b) Rank-ordered scores from the vending facility training final exam.

(c) Rank-ordered scores from the Michigan community public health agency food service sanitation course exam.

(d) If a tie score exists after the first 3 criteria specified in subdivisions (a) to (c) of this subrule have been applied, then the time stamp of the bid, as recorded on the bid line, determines the recipient of the award.

(7) Once a trainee's name has been placed upon the potential licensee list, he or she may begin bidding.

History: 2004 AACCS.

R 393.12 License entitlements; license display; license validity.

Rule 12. (1) A license entitles a licensee to all rights and protections under the Randolph-Sheppard act of 1936, as amended, 20 U.S.C. §107 et seq., as well as the act and corresponding promulgated rules.

(2) A license shall be displayed at the vending facility at all times.

(3) A license is valid only while the licensee is actively operating a facility with a valid agreement or has signed a letter of acceptance before transferring to a new vending facility.

History: 2004 AACCS.

Rule 393.13 License termination.

Rule 13. A license is issued in accordance with the Randolph-Sheppard act of 1936, as amended, 20 U.S.C. §107 et seq. and is subject to summary suspension or revocation, for cause, if the vending facility is not operated pursuant to the commission's rules and policies, the terms and conditions of the permit, or the agreement with the licensee.

History: 2004 AACCS.

R 393.14 Summary license suspension.

Rule 14. (1) If the commission finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, then summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and will remain in effect during the suspension proceedings. The proceedings shall be promptly commenced to determine if license revocation is justified. Reasons for summary license suspension may include any of the following:

(a) The commission's equipment, merchandise, property, or business is in jeopardy or has been degraded.

(b) The operator is not carrying workers' disability compensation coverage.

(c) The public health, safety, or welfare is at risk as a result of a licensee's action.

(2) A licensee whose license has been suspended is not eligible to be awarded a promotion while the license is in suspension.

History: 2004 AACCS.

R 393.15 License revocation.

Rule 15. (1) The commission may revoke a license issued to a blind person for the operation of a vending facility on federal, state, or other property for any of the following reasons:

(a) A licensee's vision has improved to the extent that he or she no longer meets the requirements of the act. The commission may periodically request that a licensee submit to an updated eye examination. The licensee shall select the service provider and the commission shall pay the cost of the eye examination. If either the commission or the licensee requests a second opinion, then the requesting party shall bear the cost of the second examination. The commission may request that a licensee submit to an updated eye examination when the commission's consultant has reviewed the original eye examination and advised the commission that there is some possibility of vision improvement. A licensee for whom there is no possibility of improved vision shall not be required to have an updated eye examination.

(b) Voluntary withdrawal from the program.

(c) An extended illness of a licensee which has been medically diagnosed and documented and which will result in the prolonged incapacity of the licensee to operate the vending facility in a manner consistent with the needs of the vending facility or other available locations in the vending facility program.

(d) A violation of the terms and conditions of R 393.24, R 393.25, R 393.26, R 393.27, R 393.28, R 393.29, R 393.30, R 393.31, or R 393.32.

(e) A violation of the terms and conditions of the vending stand agreement with the commission.

(2) Termination of participation in the program results in automatic license revocation. Before reentry into the program, the licensee whose license has been revoked shall again complete the full vending facility training program. The following shall apply:

(a) An approved leave of absence is not considered termination or withdrawal from the program.

(b) In such a situation, the licensee is afforded the opportunity to participate in the full vending facility training program, unless waived by the licensee in writing.

(3) A licensee whose license is in the termination process, as specified in R 393.16, is not eligible to be awarded a promotion while the license is in the termination process.

History: 2004 AACCS.

R 393.16 License termination procedures.

Rule 16. Before temporarily suspending or revoking a license, the commission shall do all of the following in accordance with section 92 of 1969 PA 306, MCL 24.292:

(a) Issue a written notice stating the facts or conduct that warrants the license action.

(b) Provide an opportunity to show compliance, within 30 days, with licensing requirements.

(c) Issue a notice of hearing if, within 30 days, there is a failure to show compliance with licensing requirements; and, in addition, insert in the notice the language "commencing proceedings."

(d) Cause an evidentiary hearing as prescribed in the Randolph-Sheppard act of 1936, as amended, 20 U.S.C. §107 et seq. and the act.

(e) Consider the proposed decision rendered by the hearing officer.

(f) Issue a final decision as rendered by a majority of the commissioners voting. The final agency decision shall identify the effective date of the license action.

(g) Advise the licensee in writing within 72 business hours, if the final decision is to revoke or suspend a license, of his or her right to seek a remedy through an ad hoc arbitration panel as authorized by the provisions of 34 C.F.R. §395.13 (July 1, 1981). The licensee shall then file a written request for an ad hoc arbitration, pursuant to §5 of the Randolph-Sheppard act of 1936, as amended.

(h) Advise the licensee in writing within 72 business hours, that the decision of the ad hoc arbitration panel is final and binding on the parties, except that the decision is subject to appeal and judicial review as a final agency action for purposes of the provisions of the government organization and employees act, 5 U.S.C. §101 et seq.

History: 2004 AACCS.

R 393.17 Commission responsibilities generally.

Rule 17. The commission shall do all of the following:

(a) Furnish each licensee with a copy of these rules and a copy of the manual that describes the arrangements for providing services to the licensee.

(b) Provide financial information to licensees quarterly and on a fiscal year basis.

(c) Take adequate steps to inform each licensee of the provisions of these rules and the provisions of the permit and any agreement under which the licensee operates, including the licensee's rights and responsibilities as evidenced by the signed licensee's agreement.

(d) Periodically conduct, or cause to be conducted, a management review of a random sample of licensees.

History: 2004 AACCS.

R 393.18 Commission responsibilities; vending facility site; equipment.

Rule 18. The commission shall do all of the following:

(a) Determine if a potential site is suitable for a vending facility. In a building where more than 1 vending facility exists, the commission may merge the facilities into a single vending facility. Facility merging may occur when 1 of the vending facilities is vacated and has not been awarded to another licensee after being on the bid line for 2 or more weeks. Under these circumstances, applicable additional licensee training requirements shall be waived for a period to be determined by the commission board, with the active participation of the committee. The commission shall determine, with the active participation of the committee, whether a potential location is suitable for operation as a vending facility or as a satellite. The criterion for determining if a potential location is suitable for operation as a vending facility is that the potential site's net annual income is expected to be 120% of the current federal minimum wage, based upon a 40-hour workweek.

(b) List and assign priority to suggested renovations. All renovation or remodeling activities are subject to the availability of funds. The commission shall make all final renovation decisions with input from the committee.

(c) The commission shall determine the equipment needs of each vending facility and furnish each vending facility with adequate equipment suitable to the needs of the vending facility.

(d) Maintain, or cause to be maintained, all vending facility equipment in good repair and cosmetically appealing condition and replace, or cause to be replaced, worn-out or obsolete equipment as required to ensure the continued and successful operation of the facility.

(2) The commission may authorize the lease of equipment for a vending facility. The cost of the lease shall be paid from the proceeds of the facility. A vending facility agreement signed by the licensee shall constitute informed consent to lease equipment. By signing the agreement, the licensee consents to all terms and conditions of the lease and accepts responsibility for the lease.

(3) Only the commission may transfer equipment between licensees or facilities. Equipment shall only be used in the assigned vending facility.

(4) Bill identifiers or other personal equipment transfers with the licensee to whom the identifier or other personal equipment is assigned. When a licensee leaves the program, the bill identifier or other personal equipment reverts to the commission.

History: 2004 AACCS.

R 393.19 Right and title to interest in equipment.

Rule 19. The title to the equipment in each vending facility shall be and shall remain in the name of the state of Michigan, except that equipment that is determined to not be needed in the vending facility program may be reassigned to blind individuals in the vocational rehabilitation program with an individualized plan for employment with a goal of independent business. Title to the reassigned equipment shall then be determined according to the procedures set forth in the independent business programs of the commission.

History: 2004 AACCS.

R 393.20 Vending machine income; disbursement; use.

Rule 20. (1) Income from vending machines on federal properties that is not assigned to a licensee may be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for paid sick leave and vacation time for licensees in the state program, if determined by a majority vote of the licensees. Vending machine income from federal properties that is not necessary for the purposes of this subrule shall be placed in the set-aside funds and designated as unassigned vending machine income.

(2) Upon receiving supporting documentation of a loss, income from unassigned vending machines on state and other properties may be utilized for the purpose of insuring a licensee's loss in merchandise due to theft or equipment failure. Vending machine income from state and other properties that is not necessary to insure a licensee's loss shall be placed in the set-aside fund and designated as unassigned vending machine income.

History: 2004 AACCS.

R 393.21 Promotional agent; role; duties.

Rule 21. (1) The promotional agent is the commission's representative to the vending facility licensees. A promotional agent fulfills a supervisory role in the program. A promotional agent shall do all of the following:

- (a) Assign equipment to the stand.
- (b) Monitor the licensee to ensure compliance with employer responsibilities.
- (c) Monitor compliance with applicable commission rules.
- (d) Assist a licensee in running a clean and efficient business and in complying with all of the following provisions:
 - (i) Meeting state standards.

- (ii) Being profitable and well managed.
- (iii) Meeting the established profit expectations of the business.
- (iv) Providing high-quality customer service.
- (v) Conforming to the terms and conditions of the permit.

(2) A promotional agent shall visit the facility every 6 weeks, or more often as necessary, to offer suggestions and assist in obtaining the items of equipment or the service for which the commission is responsible. A promotional agent shall complete a field activity report after every visit, which shall include an assessment of the facility based upon the goals identified in subrule (1) of this rule. If a facility visit is not possible, then a promotional agent shall document telephone contact with the licensee.

(3) A promotional agent shall evaluate the facility annually, or more often if necessary, to ensure operation as described in subrule (1) of this rule. A new facility shall be evaluated semiannually during the first year of operation, or more often if necessary.

(4) A promotional agent shall monitor compliance with the rules and policies of the commission.

(5) A promotional agent shall hold in confidence information regarding the facilities for which the agent is responsible.

(6) A promotional agent shall arrange for additional licensee training, if needed.

(7) A promotional agent shall explain program rules and policies.

History: 2004 AACCS.

R 393.22 Initial vending facility inventory.

Rule 22. (1) The commission shall do all of the following:

(a) Furnish the licensed vending facility with an initial 2-week merchandise inventory in an amount that is determined in consultation with the vending facility licensee. The vending facility licensee shall sell only the types of items stated in the permit with the building grantor and in the licensee's agreement with the commission.

(b) Use the estimated, or actual if available, purchase costs for a 1-year business cycle divided by 26 for determining the initial 2-week merchandise inventory. The administrator may authorize deviations from the formula if the deviation does not violate other provisions of these rules. Fully documented requests for deviation from the formula shall be submitted to the administrator in writing for approval.

(c) Include the initial itemized inventory as a part of the vending facility agreement form. The assigned inventory value shall be recorded on the vending facility inventory record. The total amount of the assigned inventory value shall be recorded on the vending facility agreement.

(d) Annually adjust the inventory amount based upon the wholesale food price index as published by the U. S. department of labor bureau of labor statistics.

(2) Except as specified in subrule (1)(d) of this rule, the initial merchandise inventory amount shall not be increased unless a significant business expansion, adjusted for inflation, occurs or additional product lines or services are added. A significant business expansion is an expansion that is expected to last for 6 or more months.

(3) If a significant business expansion occurs, then the formula for determining the amount of the additional inventory assignment shall be the formula specified in subrule (1)(b) of this rule, but substituting the projected sales of new business products or services for a 1-year business cycle. The additional expanded amount shall be covered by the commission at the time the expanded inventory is initially purchased, but shall be added to the assigned inventory amount as a licensee responsibility.

(4) Both the initial merchandise inventory stock and the expansion inventory, if applicable, are added together to become the beginning assigned inventory amount for which the licensee is responsible.

(5) An itemized inventory of the expansion items shall be added to the beginning inventory and attached to the vending facility agreement.

History: 2004 AACCS.

R 393.23 Ending inventory.

Rule 23. (1) When a licensee leaves a facility, an ending inventory shall be taken jointly by the outgoing licensee, the incoming licensee, and the commission. The beginning inventory, including expansion, if applicable, and the ending inventory amounts shall be compared.

(2) If the initial merchandise inventory is too low, based upon the formula in R 393.22(1)(b), then an inventory adjustment shall be made by the commission. The commission shall reimburse the outgoing licensee for the difference, and the new beginning inventory amount shall be entered on the incoming licensee's inventory record and vending facility agreement.

(3) If the ending inventory amount is more than the beginning inventory amount, then there is an overage. The overage represents accrued earnings of the outgoing licensee. The outgoing licensee shall pay set-aside fees on the full amount of overage. The disposition of an overage is the responsibility of the outgoing licensee.

(4) If the ending inventory is less than the beginning inventory, then a shortage exists. If a shortage exists when the inventory is taken, then the outgoing licensee shall reimburse the commission immediately. If a licensee cannot reimburse the commission within 24 hours, then license revocation proceedings shall be initiated as described in R 393.16. As of the effective date of this rule, a repayment agreement shall not be created, without exception.

(5) When a licensee leaves a facility that has vending machines, a catalog of spare parts shall be created jointly by the outgoing licensee, the incoming licensee, and the commission. If the ending catalog of spare parts is missing parts as compared to the beginning inventory, as detailed in R 393.32(1), then the outgoing licensee shall replenish the spare parts inventory within 24 hours.

History: 2004 AACCS.

R 393.24 Licensee obligations generally.

Rule 24. (1) Each licensee shall agree to do all of the following:

(a) Perform, to the best of his or her ability, the necessary duties in connection with the vending facility pursuant to the commission's rules and procedures, the terms of the permit, and the agreement with the licensee and otherwise abide by the rules of the commission.

(b) Operate not more than 1 concession as defined in the act.

(c) Take no action in derogation of, or inconsistent with, the title of the state of Michigan to the vending facility equipment.

(d) Sign the vending facility agreement, agreeing to accept full responsibility for the amount of the initial merchandise inventory. The licensee further agrees to maintain that level of inventory at all times, with the exception of seasonal business cycles, until he or she leaves the facility. Nothing contained in the vending facility agreement makes the parties partners or joint venturers with each other. The only relationship between the commission and the vending facility operator is that of agency and license. Nothing in the vending facility agreement renders either of the parties liable to any third party for debts of or litigation of the other party.

(e) Notify the promotional agent, within 2 weeks of when a vending facility is assigned, of any problems with the inventory. After that date, the commission is not obligated to adjust the inventory or reimburse for bad products.

(f) Submit, in writing, requests for facility renovations, or discuss, with the assigned promotional agent, facility renovations as a component of the annual vending facility evaluation process. Proposed renovations shall be forwarded to the central office of the commission.

(g) Admit duly authorized representatives of the commission to the vending facility and cooperate with them in connection with their official duties and responsibilities.

(h) Sell only the types of merchandise itemized in the agreement signed by the licensee and the commission.

(i) Pay for all merchandise and supplies purchased within the terms and conditions of the credit policies of suppliers.

(j) Obtain approval of the commission, except in emergencies, before employing assistants within the guidelines established by the commission board with the active participation of the committee.

(k) Conform to the hours of operation as fixed by the commission after consultation with the licensee and the agency having charge of the property. The hours of operation shall be stated on the vending stand agreement.

(l) Participate in the in-service training programs provided.

(m) Obtain and maintain a general comprehensive liability insurance policy and, if the licensee hires 1 or more full-time or part-time employees, obtain and maintain workers' disability compensation coverage and pay unemployment taxes and all other applicable federal, state, and local taxes.

(n) Comply with all applicable federal and state laws and regulations, including tax laws.

(o) The commission shall commence license revocation proceedings if a licensee fails to comply with any of the provisions specified in this subrule.

(2) A licensee shall not discriminate against any person or persons in furnishing the use of any vending facility, including any and all services, privileges, and accommodations provided. A licensee shall comply with all of the following:

(a) Title VI of the civil rights act of 1964, 42 U.S.C. § 200d and regulations issued under title VI of the civil rights act of 1964.

(b) The Americans with disabilities act of 1990, 42 U.S.C. §12101 et seq.

(c) 1976 PA 220, as amended, MCL 37.1101.

(d) Any other applicable civil rights legislation.

(3) A licensee shall refer repairs to facility structure and utilities to the commission for action. If the needed repair is an emergency and requires immediate attention, then the licensee shall contact building personnel to effect the necessary repairs.

History: 2004 AACCS.

R 393.25 Licensee insurance requirements.

Rule 25. A licensee shall do both of the following:

(a) Obtain general comprehensive liability insurance. A licensee shall comply with the general comprehensive liability insurance requirement by satisfying either of the following provisions:

(i) Purchasing a policy independently and providing the commission with a certificate of insurance showing the dates of coverage. The commission shall be named on the certificate of insurance to assure its notification if coverage is cancelled or lapses.

(ii) Purchasing liability insurance through the commission. Rates are dependent upon gross sales. A licensee shall be notified annually of his or her specific multiplier, as established by the commission board, with the active participation of the committee, used to calculate the monthly payment. Payment shall be made on a monthly basis and recorded on the monthly vending facility report.

(b) Carry workers' disability compensation insurance pursuant to state law and R 393.24 (1)(m). The commission shall be named on the certificate of insurance to document that the licensee has coverage and to ensure that the commission is notified if coverage is canceled or lapses.

History: 2004 AACCS.

R 393.26 Licensee health and safety obligations.

Rule 26. (1) A licensee shall operate a vending facility pursuant to all applicable health and safety laws and rules.

(2) A licensee shall apply for and hold all health licenses. Fees for health licenses are considered to be a business expense and are the responsibility of the licensee. A licensee shall submit, within 10 calendar days of receipt, all periodic health inspection reports to the commission. Where correction of the violation is within the purview of the licensee, the licensee shall act immediately to correct a violation.

(3) Failure to comply with the corrective action for a non-critical violation is grounds for commencement of license revocation proceedings. A non-critical violation is identified and defined by part 129 of 1978 PA 368.

(4) Failure to comply with the corrective action for a critical violation is grounds for immediate and summary license suspension. A critical violation is identified and defined by part 129 of 1978 PA 368.

(5) Where correction of the violation is beyond the purview of the licensee, the commission shall make the correction pursuant to the inspection report.

History: 2004 AACCS.

R 393.27 Licensee reporting requirements.

Rule 27. (1) A licensee shall furnish reports as the commission may require periodically.

(2) A licensee shall complete the commission's standard monthly vending facility report. Business expenses, taxes paid, profit, and financial operations are major components of the report. The report shall be an accurate and true report.

(3) A licensee shall submit the monthly report data to the department's administrative entity. Reports shall be time and date stamped by the fifteenth day of the month following the period covered by the report.

(4) If a report associated with a set-aside payment is delinquent, then the reporting licensee is not eligible for promotion until 30 days after the time and date stamp of the delinquent report. If a set-aside fee payment is delinquent, then the reporting licensee is not eligible for promotion until 30 days after the post mark date of the delinquent set-aside fee and a penalty of 50% of the monthly set-aside fee owed shall be assessed and paid with the next monthly report.

(5) If a payment for a repayment agreement, made before the effective date of these rules, is delinquent, then the reporting licensee is not eligible for promotion until 30 days after the time and date stamp of the delinquent payment.

(6) Receipt of a nonsufficient funds check in payment shall be treated in the same manner as a delinquent payment. A penalty of 50% of the monthly set-aside fee owed shall be assessed and paid with the next monthly report.

(7) The completion of the monthly report and the payment of the set-aside fees are the sole responsibilities of the licensee.

(8) A licensee shall make payment of the set-aside fee by the due date. Set-aside fee payments shall be post marked by the twenty-fifth day of the month following the period covered by the associated report. The set-aside fee payment is a payment due the commission. The commission shall not accept partial payment for past due set-aside fee payments, liability insurance payments, or for repayment agreements that have been grandfathered in under subrule (4) of this rule.

(9) Failure to submit 2 or more reports or payments during a 12-month period shall result in commencement of license revocation proceedings.

History: 2004 AACCS.

R 393.28 Licensee fees.

Rule 28. (1) A uniform set-aside fee based upon net proceeds shall be paid by each vending facility licensee. The fee shall be fixed by the commission with the active participation of the committee. The fee shall be designed to prevent, so far as practicable, a greater charge for any purpose than is reasonably required, with allowance for reserves. Any changes in the set-aside fees shall be submitted to the commissioner of the United States rehabilitation services administration for prior approval and shall be embodied

in the written agreement with the licensee. The fees are to be credited to a vending facility's set-aside for the following purposes only:

- (a) Maintenance and replacement of equipment.
- (b) The purchase of new equipment.
- (c) Management services.

(d) The establishment and maintenance of retirement or pension funds and health insurance contributions and providing for paid sick leave and vacation time, if so determined by a majority vote of the licensees licensed by the commission.

(2) The proceeds of the operation of each vending facility shall accrue to the licensee after the licensee has paid the operating costs and the set-aside fee.

History: 2004 AACCS.

R 393.29 Licensee inventory obligations.

Rule 29. A licensee shall take an inventory by December 31 of each year in accordance with commission policy. The inventory shall include all of the following information:

- (a) Item description.
- (b) Quantity.
- (c) Unit cost (wholesale cost).
- (d) Unit cost times quantity (total of money assigned to the item).

(e) Total value of complete inventory. It is the licensee's responsibility to assign a unit cost to each item and to extend the inventory to determine the value of the entire inventory for that particular facility.

History: 2004 AACCS.

R 393.30 Licensee profit expectation.

Rule 30. (1) A licensee shall maintain the profit expectations established in this rule. A licensee's profit level is calculated based upon a period of 3 consecutive months. Licensee profit expectations are as follows:

- (a) Dry stand - 11% profit expectation.
- (b) Snack bar - 25% profit expectation.
- (c) Vending machines as follows:
 - (i) 30% profit expectation for state-owned and nonleased equipment locations.

(ii) 25% profit expectation for leased equipment locations. Profit expectation for leased equipment locations is calculated by the following formula: The sum of net proceeds plus leased equipment costs, divided by total sales for the month.

- (d) Cafeteria - 11% profit expectation.
- (e) Combined cafeteria/snack bar - 17% profit expectation.
- (f) Vending machine routes as follows:
 - (i) Nonhighway vending route - 25% profit expectation.
 - (ii) Highway vending route - 30% profit expectation.

(2) Licensees may request an exception to the established profit expectation for their vending facility. The request for the exception shall be addressed to the licensee's

promotional agent and shall include the reason(s) the request should be granted. Within 15 working days of the request, a panel consisting of the vending facility's promotional agent, the administrator, and the chair of the committee's promotions and seniority subcommittee shall review the request and make a determination. The promotional agent shall notify the licensee of the panel's determination in writing. The panel's decision may be appealed subject to R 393.54, R 393.55, and R 393.56.

History: 2004 AACCS.

R 393.31 Licensee equipment responsibilities.

Rule 31. (1) A request for equipment shall be submitted to the promotional agent in writing. Equipment purchased by a licensee without the prior written approval of the promotional agent shall neither be reimbursed by the commission nor allowed to remain in the facility. All nonapproved equipment shall be removed.

(2) A licensee may purchase small equipment items without prior approval. Small equipment items are items that may be purchased at a dollar value to be determined by the commission board with the active participation of the committee. Equipment shall be pertinent to the kinds of products sold and the type of facility to which the equipment is assigned. Licensee reimbursement for the cost of equipment is optional at the discretion of the promotional agent. Original invoices for the purchases shall be submitted to the promotional agent for reimbursement.

(3) A licensee may purchase items that cost less than \$500.00 only with the prior written approval of the promotional agent. For items that cost between \$100.00 and \$500.00, a licensee shall also secure 3 bids and submit written documentation, including the time of the bid, the date of the bid, the company bidding on the equipment, and the cost, to the promotional agent. A licensee who fails to provide written documentation of 3 bids shall not be reimbursed for the equipment.

(4) An individual piece of equipment that costs more than \$500.00 shall be authorized by the promotional agent for purchase through the state purchasing system. Reimbursement shall not be made for items that cost more than \$500.00.

(5) The equipment invoice shall be promptly submitted to the promotional agent for reimbursement. The invoice shall be the original, be legible, and contain all of the following:

- (a) The signature of the licensee.
- (b) The equipment company's federal employer identification number.
- (c) The date of delivery.
- (d) The invoice number.
- (e) The name and address of equipment company.
- (f) An itemized list of charges, total amount paid, and total amount due.

History: 2004 AACCS.

R 393.32 Licensee responsibility regarding equipment repairs.

Rule 32. Repairs are effected as follows:

(a) A licensee shall make a personal effort to make repairs. The commission shall supply appropriate spare parts, including 1 coin mechanism of each type necessary to operate the facility and 1 set of clean tubes and chutes for each machine type at a vending facility. A spare bill transport shall be provided for each vending facility that has a bill changer. Other spare parts shall be provided as determined necessary by the commission.

(b) If a licensee is unable to make a repair, he or she shall immediately contact a repair company, specializing in the types of repairs needed, to make the repair.

(c) A licensee shall make the necessary arrangements to meet repair personnel.

(d) A licensee shall obtain an estimate of the repair cost. If repairs cost more than an amount determined by the commission board, with the active participation of the committee, then the licensee shall contact the promotional agent for prior authorization. If a promotional agent is not available, then the licensee shall contact the commission for approval before effecting the repair. If commission staff is unavailable for 36 hours from the first attempted contact by the licensee, then the licensee may authorize the repair up to \$500.00.

(e) A licensee shall pay the repair company the repair deductible amount (refer to R 393.33(2)) or the entire repair cost immediately upon repair pursuant to the credit policies of the repair company.

(f) The bill for completed work shall be promptly submitted to the promotional agent for payment. The invoice shall be the original, be legible, and contain all of the following:

(i) The signatures of both the repair company representative and the licensee.

(ii) The company's federal employer identification number or, if a private person, the private person's social security number.

(iii) The department equipment tag number.

(iv) The date of repair.

(v) The invoice number.

(vi) The name and address of the repair company.

(vii) An itemized list of charges, total amount paid, and total amount due.

(viii) A notation specifying if the payment is to be made to the licensee or to the vendor.

History: 2004 AACCS.

R 393.33 Licensee repair deductible.

Rule 33. (1) A licensee shall pay a repair deductible on each equipment repair.

(2) The repair deductible is calculated by multiplying the previous year's actual or, for locations where documentation is incomplete, estimated gross sales by a factor established by the commission board, with the active participation of the committee. For new locations, an estimate of gross sales is used.

(3) Repair deductibles are applied only to labor and travel charges. Parts are not subject to the repair deductible. The repair deductible does not apply during the first 30 days after a licensee transfers facilities. A licensee repair deductible does not apply to equipment transferred into the facility for the first 30 days after transfer. For new licensees, deductibles do not apply for the first 60 days.

History: 2004 AACCS.

R 393.34 Licensee health insurance.

Rule 34. (1) A licensee may deduct an amount from set-aside fees due to offset the cost of health insurance. A licensee shall submit proof of coverage with each monthly vending facility report. The amount of the health insurance deductible shall be annually recommended by the committee and shall be approved by the commission board. The determination of the deductible shall be based on a budget analysis to determine if the deduction will continue.

(2) If set-aside funds are insufficient to continue the deduction as a licensee benefit, then the deduction may be discontinued or altered by the commission based on a recommendation of the committee with the approval of the commission board or upon staff recommendation.

(3) The health insurance deductible shall be used for a licensee's expenses for health insurance. Proof of payment shall be submitted each month showing the coverage period, carrier, and type of insurance (family or single). Deductions shall not be more than the actual amount paid for the licensee's portion of health insurance coverage.

History: 2004 AACCS.

R 393.35 Leave of absence, generally.

Rule 35. (1) This rule applies to all leaves of absence.

(2) To take a leave of absence, an operator shall first apply in writing to the administrator for the leave of absence. The leave of absence request shall include the reason(s) the request is being made. The administrator shall approve or deny the request in writing, identifying the applicable rule and subrule(s) for granting or denying the leave of absence.

(3) If a licensee is to be absent from his or her vending facility for more than 14 days but less than 30 days (short-term absence), then he or she shall leave a message at his or her promotional agent's office to request an absence. A vending facility shall be operated in accordance with the hours of operation identified in the vending facility agreement. Operator absence from a vending facility does not justify closure of the facility. A vending facility shall be reserved for the same licensee upon the licensee's return from an approved short-term absence only.

(4) If a licensee is to be absent from his or her vending facility for 30 days or more, then he or she shall do all of the following, as applicable:

(a) Notify his or her promotional agent by telephone and in writing.

(b) Give his or her promotional agent a written plan by which his or her vending facility is to be operated and maintained pursuant to program rules and regulations during his or her absence.

(c) If an absence is due to illness or injury, then the licensee shall provide his or her promotional agent with a physician's statement. If absence extends beyond the time stated in the initial physician's statement, then the promotional agent shall request further updates, as needed. The initial physician's statement and subsequent statement shall be

treated in a confidential manner. The commission may request a second opinion at its own expense.

(d) A licensee shall not be absent from his or her vending facility for more than 60 consecutive calendar days during 1 calendar year, unless otherwise stated in these rules.

(5) A licensee's seniority is frozen at the beginning of the leave of absence.

(6) A vending facility vacated by a licensee who takes a long-term leave of absence shall not be reserved for the same licensee upon return from the absence.

(7) A licensee who takes a leave of absence shall be responsible for obtaining information regarding his or her retirement status and benefits. The commission is not responsible for obtaining the information.

History: 2004 AACCS.

R 393.36 Maternity, paternity, or adoption leave of absence.

Rule 36. A licensee may take a leave of absence for maternity, paternity, or adoption reasons. A maternity, paternity, or adoption leave of absence shall commence not more than 3 months before the expected delivery or adoption date and shall last for not more than 6 months after delivery or adoption.

History: 2004 AACCS.

R 393.37 Illness or injury leave of absence.

Rule 37. (1) A licensee may take a leave of absence for reasons of illness or injury pursuant to this rule.

(2) A medical leave of absence is normally granted for up to 6 months. An extension may be granted for an additional 6 months. Normally, a leave of absence for illness or injury shall not exceed 12 months in total.

(3) Physicians' reports shall be requested by the commission. The reports shall be used to ensure that the licensee on leave is using the leave for illness or injury. A physician's report shall be treated as confidential.

(4) A licensee who returns from extended sick leave shall submit a medically documented statement certifying that the licensee is able to return to work. On the basis of the certification, the licensee shall begin active bidding, subject to the same bidding procedure as potential licensees.

History: 2004 AACCS.

R 393.38 Educational leave of absence.

Rule 38. A licensee may take a leave of absence for educational reasons. An educational leave of absence may be granted for up to 5 years under the following conditions:

(a) The licensee shall have worked continuously in the program for a minimum of 3 years.

(b) While on educational leave, the licensee shall maintain full-time student status pursuant to the policies of the institution.

(c) When returning to active status in the program, the licensee shall provide confirmation of full-time student status during the time of his or her absence.

History: 2004 AACCS.

R 393.39 Other leaves of absence.

Rule 39. Up to 1-year leave of absence may be granted to a licensee under the following conditions:

(a) The licensee shall have been continuously active in the program for a minimum of 3 years.

(b) The licensee may not bid on another facility until his or her leave time, added to his or her time in the previous vending facility, equals 6 months from the date that he or she took over his or her last vending facility.

History: 2004 AACCS.

R 393.40 Leave of absence for self-employment.

Rule 40. (1) A leave of absence may be granted to a licensee to provide an opportunity for self-employment outside the program. The leave shall not be for more than 5 years.

(2) A licensee who has 3 or more years of seniority may apply for a self-employment leave of absence. A request for a self-employment leave of absence shall be in writing and submitted to the program administrator not less than 60 calendar days in advance of the expected leave date.

(3) A committee that consists of the program administrator, the committee chair, and the subcommittee on promotion and seniority chair shall have 15 working days to approve or deny the request in writing, identifying the applicable rule and subrule or subrules for granting or denying the self-employment leave of absence. The applicant for a self-employment leave of absence shall meet the criteria described in subrules (1), (2), (6), and (7) of this rule. The committee shall also determine the eligibility of a person who returns to the program under the leave of absence policy as specified in this rule.

(4) State retirement credit shall resume pursuant to the rules and regulations of the state retirement system when a licensee reenters the program.

(5) A licensee who takes a self-employment leave of absence shall be responsible for obtaining information regarding his or her retirement status and benefits. The commission is not responsible for obtaining the information.

(6) A request for a self-employment leave of absence shall include evidence that self-employment outside the program is expected. Evidence may include any of the following:

(a) The filing of papers for an assumed business name.

(b) Approved franchise papers.

(c) New business purchase agreement.

(d) Vending facility of business.

(e) A loan agreement.

(f) Permit or licenses.

(7) All set-aside and insurance fees, repayment agreements and loans, and applicable state and federal taxes shall be current when a leave of absence for self-employment is granted.

(8) If, at any time during the leave of absence, evidence is brought to the attention of the administrator that 1 or more of the criteria described in subrules (9) and (10) of this rule have not been met, then the administrator shall request that the committee convene a review panel to review and ascertain the facts of the case within 15 calendar days. After the panel's review, its recommendation shall be forwarded within 15 calendar days to the administrator for a final decision. If it is determined that the licensee has violated the criteria, then the leave of absence shall be immediately terminated and license revocation proceedings shall commence.

(9) A licensee shall pay all set-aside and insurance fees before the due date of the month following the month in which the leave is given. Without exception, a licensee shall pay any other monies due to the program in full within 30 calendar days after the administrator notifies the licensee, in writing, of the obligations. A licensee shall pay all wholesalers and suppliers who have supplied goods and services at a program vending facility in full or pursuant to any agreement made between the licensee and the supplier.

(10) Before a person returns to the program, the licensee shall totally liquidate any business connections outside of the program. When requesting reentry into the program, the person shall submit copies of his or her internal revenue service schedule C (sole proprietorship) tax form for each tax year that he or she was on leave to verify that the leave was used for the purpose granted. The provisions of R 393.42 also apply to a self-employment leave of absence.

History: 2004 AACCS.

R 393.41 Maintaining leave of absence status.

Rule 41. If, at any time during a leave of absence granted under R 393.35, R 393.36, R 393.37, R 393.38, R 393.39 and R 393.40, evidence is brought to the attention of the administrator that an individual has not met any of the criteria described in subdivision (a), (b), and (c) of this subrule, then the individual may return to the program only as a potential licensee who does not have program seniority:

(a) A licensee shall pay all set-aside and insurance fees before the due date of the month following the month in which the leave was given.

(b) A licensee shall pay any other monies due to the program within 30 days of written administrator notification to the licensee of the obligation.

(c) A licensee shall pay all wholesalers and suppliers who supplied goods and services at a program vending facility in full pursuant to any agreement made between the licensee and the supplier.

History: 2004 AACCS.

R 393.42 Return from leave of absence.

Rule 42. (1) A vending facility that a licensee left for a long-term leave of absence shall not be reserved for the same licensee upon reentry into the program.

(2) To return to active status after a leave of absence, a licensee is responsible for meeting all program requirements added since the leave of absence commenced.

(3) A licensee may reenter the program by bidding on any available locations as they become available for bid.

(4) A licensee reentering the program bids as a licensee with the amount of seniority accrued at the time the leave of absence commenced, but does not gain additional seniority during the time of bidding. The last evaluation given to a licensee before taking a leave of absence shall be used in awarding a returning licensee a new vending facility. The leave of absence is not terminated until the licensee signs a vending facility agreement.

History: 2004 AACCS.

R 393.43 Satellite sites.

Rule 43. (1) If a potential concession is not expected to return to the licensee at least 120% of the applicable current federal minimum wage based on a 1-year business cycle, then a satellite site may be established. A determination to establish a satellite site shall be made by the commission

with input from the locations subcommittee of the committee.

(2) If a concession or a potential concession does not meet the requirements stated in subrule (1) of this rule, the concession or potential concession may become a satellite of an existing concession. The satellite shall be in the immediate vicinity of the existing concession. This subrule does not apply when a potential satellite is part of an existing facility as defined in 20 C.F.R. §395.1(h)(A).

(3) A satellite shall not be established unless the state licensing agency determines that the facility will produce revenues in excess of costs. A value shall be assigned to all unpaid labor based upon the prevailing wage rate for people in the community doing the same or similar work, which shall be determined from information provided by the Michigan unemployment agency. A licensee shall produce an acceptable written plan that shall include all of the following information:

(a) The number of additional employees.

(b) The amount of storage space.

(c) The level of service to be provided to customers (visits per day).

(d) The means to be utilized for transporting stock, for example, hand cart, car, or van.

(4) If no licensee in the immediate area submits a profitable plan for a satellite, then the administrator may, if practical, arrange for a private

vending company to provide the requested services on a contractual basis and to forward the commissions as unassigned vending machine income to the set-aside account. At the end of a 1-year business cycle, each unassigned facility contract shall be reviewed to determine whether the facility may be established as a satellite vending facility or a separate facility.

(5) When a concession that has satellites is to be placed for bid, the satellite or satellites shall be evaluated to determine whether each satellite can be an independent concession as described in subrule (1) of this rule.

(6) Preference shall be given in the assignment of equipment and other resources to state and federally mandated facilities and to other existing facilities.

(7) The vending facility agreement shall be amended each time a site is added to or removed from a facility.

History: 2004 AACCS.

R 394.44 Licensee assistance and training generally.

Rule 44. (1) To ensure the maximum financial return and that employment opportunities for successive blind persons are preserved, a licensee shall receive reasonable systematic assistance and in-service training in all of the following areas:

- (a) The keeping of accounts.
- (b) The selection and purchase of suitable merchandise.
- (c) The maintenance of a clean and attractive vending facility.
- (d) The proper cleaning, maintenance, and sanitation of equipment.
- (e) The utilization of sound business practices and methods.

(2) A licensee shall receive upward mobility training including further education and additional training or retraining for improved work opportunities. Upward mobility training includes training a vending facility licensee to become a cafeteria facility licensee, which is appropriate upward mobility training as described in subrule (4)(a) of this rule.

(3) If a licensee and his or her promotional agent have identified specific training needs that would improve the management of a vending facility, then the promotional agent may arrange for the training. The following training is authorized:

(a) Classroom training at the Michigan commission for the blind training center in Kalamazoo.

(b) On-the-job training, either at a licensee's facility or at another program facility.

(c) Regional group training classes.

(d) Training provided by a third person that is approved by the commission or training provided by another preapproved source.

(4) The commission shall reimburse a licensee for training only if all of the following conditions are met:

(a) The training improves management skills related to current operation or leads to upward mobility within the program.

(b) The training was requested in writing and preapproved by program staff.

(c) The training is completed successfully.

(5) Ongoing vending machine training shall be offered periodically.

(6) All commission-sponsored group training activities shall be announced on the bid line or by other appropriate means.

(7) It is the responsibility of the program licensee to make all training requests.

History: 2004 AACCS.

R 393.45 Vending facility training for existing cafeteria licensees.

Rule 45. To be awarded a vending facility, an existing cafeteria licensee who has not completed classroom and on-the-job snack bar and vending training, shall complete the following training:

(a) One week of classroom training, including both of the following:

(i) Two days of training regarding the Randolph-Sheppard act of 1936, P.L. 74-732, as amended by P.L. 83-565 and P.L. 93-516 (20 U.S.C. §107 et seq.), the act, and rules promulgated under the act.

(ii) Equipment certification on all program equipment.

(b) Vending machine on-the-job training, as determined by the commission board with the active participation of the committee. Both the training report and the vending facility on-the-job training evaluation shall be submitted to the program administrator for approval before being eligible for the award of a vending facility.

History: 2004 AACCS.

R 393.46 Cafeteria training for licensees.

Rule 46. (1) Under the Randolph-Sheppard act of 1936, as amended, as specified in 20 U.S.C. §107 et seq., a licensee is eligible for upward mobility training. Training a vending facility licensee to become a cafeteria facility licensee is appropriate upward mobility training. An individual plan for employment is developed for a client who participates in upward mobility training.

(2) Entry into the program as a cafeteria vending facility licensee requires college-level academic competencies and on-the-job training, as determined by the commission board with the active participation of the committee, and as published in the program operating manual. For a licensee who is managing a vending facility, a portion of the college-level academic competencies and cafeteria on-the-job training, as determined by the commission board with the active participation of the committee, is required. The remaining portion of the college-level academic competencies as determined by the commission board with the active participation of the committee shall be completed by the licensee within a time period specified by the commission board with the active participation of the committee.

(3) College-level competencies may be obtained at institutions of higher education offering programs in food service or motel and hotel management.

(4) If a licensee who is managing a vending facility applies to become a cafeteria vending facility licensee, then the licensee shall first be referred to the cafeteria promotional agent for a successful interview before referral to the vocational rehabilitation program for the case file to be reopened.

(5) If a candidate is considered to be not appropriate to become a cafeteria vending facility licensee by the promotional agent, then the candidate shall be referred to the vocational rehabilitation counselor for alternative services. A candidate shall not be admitted to the program without a satisfactory interview.

(6) It is the responsibility of the licensee to do all of the following:

(a) Provide the program administrator with a grade report within 30 days of completion of the academic period.

- (b) Maintain a 2.0 grade point average over the entire academic career.
- (c) Complete all classes during the academic period.
- (d) Fully utilize recording services and volunteer reader services.
- (e) Apply for financial assistance each academic year.
- (f) Complete the remaining requirements of the college-level academic competencies.

(7) If a licensee enrolled in a college or university fails to meet the conditions identified in subrule (6) of this rule, then the deficiencies shall be reviewed by the administrator or his or her designee and the client. If necessary, the licensee shall be informed that he or she is being placed on probation by the commission and that failure to meet the conditions for eligibility within the next academic period shall result in complete discontinuance of support by the commission. A grade of incomplete received by the client shall be made up during the next academic period.

(8) The probationary status identified in subrule (7) of this rule pertains only to financial academic support, not to the licensure of a licensee.

(9) If a licensee has successfully completed the college-level academic competencies, then she or he shall forward the documents to the promotional agent. The promotional agent shall provide confirmation that college-level competency requirements have been met.

(10) After a licensee completes the initial portion of the academic competencies, the cafeteria promotional agent shall arrange for on-the-job training for the licensee.

(11) Failure to complete the additional college-level competency areas within the time period specified in subrule (2) of this rule after being awarded a cafeteria license shall result in commencement of license revocation. The time period for completing the academic requirements begins on the date the licensee signs the vending facility agreement for the operation of the cafeteria.

(12) A licensee who fails to complete the additional college-level competency areas within the time period specified in subrules (2) and (11) of this rule is not precluded from bidding on a facility of another type before the expiration of the time period.

History: 2004 AACCS.

R 393.47 Licensee promotions and demotions.

Rule 47. (1) The bid process is governed by this rule. A licensee may be promoted to another, or a more profitable, vending facility when a vending facility becomes available. To be promoted, a licensee shall bid on the facility, be willing to relocate, and be qualified. All of the following shall be included as licensee qualification factors:

- (a) Certification to operate the specific type of facility.
- (b) Evaluation of past performance.
- (c) Participation in the in-service training programs.
- (d) Seniority.
- (e) Compliance with all program rules and regulations. When all factors are equal, seniority shall prevail. Promotion procedures shall be uniformly applied and developed with the active participation of the committee.

(2) A licensee shall participate in mandatory in-service training and shall not be eligible for promotion until training is completed. A licensee may be excused from mandatory in-service training only with written supervisory approval.

(3) When a licensee has demonstrated an inability to operate the present vending facility under uniformly applied program standards, developed with the active participation of the committee, the licensee may be demoted or transferred to another vending facility that the licensee is considered qualified to operate, if a facility is available. If a facility is not available, then the licensee shall be removed from the present facility and the licensee's name shall be placed on the potential licensee's list until a facility is available. Demotion and transfer or removal of a licensee shall conform to the procedures outlined in R 393.13, R 393.14, R 393.15, and R 393.16.

History: 2004 AACCS.

R 393.48 Bid process generally.

Rule 48. (1) The commission shall announce available locations on a bid line, which shall be routinely updated.

(2) A licensee shall learn of available locations by calling the bid line.

(3) A licensee may place a bid by calling the established line to record his or her bid on a vending facility.

(4) The administrator awards the vending facility to the licensee under the criteria established in these rules.

(5) A licensee shall accept the vending facility both verbally and in writing.

History: 2004 AACCS.

R 393.49 Bid line.

Rule 49. (1) A message of available locations shall be placed on the bid line on the same day each week unless extenuating circumstances exist. The message announcement shall include all of the following information:

(a) The vending facility number. A potential licensee shall use the number when bidding on the facility.

(b) The geographic location of the facility (building/city).

(c) The facility type.

(d) The estimated gross sales.

(e) The name of contact person.

(f) The estimated date of availability.

(2) If the bid announcement day is a state holiday, then bids for that bid cycle shall be updated on the next state working day of that week.

(3) The deadline for submitting a bid is the following week's announcement day at noon.

History: 2004 AACCS.

R 393.50 Bidding procedure.

Rule 50. (1) The bid line shall contain instructions for placing a bid. Program staff shall record the bid with the date and time it was placed.

(2) A bid may be placed from 5 p.m. on the bid day until noon on the following bid update day.

(3) Program administrative staff shall offer the open vending facility to the successful bidder. The candidate shall either commit to the vending facility or decline the offer in writing within 72 hours after the close of bids. If the first candidate declines, then program staff shall continue the same award procedure, moving down the list of eligible licensees or potential licensees until the facility is awarded.

(4) Failure to make a commitment by the noon deadline constitutes declining the offer and the opportunity shall be offered to the next licensee on the list.

(5) A licensee who is awarded a vending facility shall be announced in the week after the award.

(6) A licensee is considered installed in a vending facility when an agreement has been signed.

(7) If a potential licensee does not bid and accept a facility within 3 years, then he or she shall take a commission-designated retraining course as approved by the commission board, with the active participation of the committee. Failure to retake training results in deletion of the potential licensee's name from the potential list and the potential licensee is not eligible to bid or accept a facility within the program.

History: 2004 AACCS.

R 393.51 Bid award for vending facility.

Rule 51. (1) For the award of a vending facility, seniority is based on the number of days in which a licensee is licensed in the program. Bidders are ranked by their seniority and on the basis of all of the following:

(a) The most recent evaluation score. A satisfactory score is the minimum requirement.

(b) The date of transfer into the current facility. Six months in the current facility is the minimum requirement.

(c) The status of set-aside payments or reports. A licensee who submits late reports or accompanying set-aside payments is ineligible for promotion until 30 days after the time and date stamp of the delinquent report and the postmark receipt date of appropriate monies.

(d) Training appropriate to the facility for which the bid was placed.

(e) The profit percentage of the high bidder's vending facility for the most recent 3 report months shall meet the standard set forth in R 393.1.

(f) Documentation on file with the commission that the licensee is in compliance with workers' compensation laws, unemployment tax laws, and liability insurance requirements.

(2) From acceptance of a bid until the projected operation date of a vending facility, a successful bidder may not bid on another vending facility. If the vending facility doesn't open on time, then a licensee may bid on a second vending facility. If the licensee is awarded the second vending facility, his or her name is withdrawn from

consideration for the first vending facility. The vending facility location shall be offered to the next qualified bidder.

(3) Locations that are not awarded to a current licensee shall be offered in order of seniority to persons on the potential licensee list who have bid. Certification as a potential licensee and seniority on the list of potential licensees are the criteria for award to a potential licensee, as set forth in the program operations manual.

(4) For nonmandated facilities, the building grantor may hold an interview and choose a candidate from a list of qualified bidders provided by the program. The commission shall not be involved in the final decision. If a bidder is offered a nonmandated vending facility and does not accept it, then the rejection of the offer shall be confirmed in writing by the bidder.

(5) Bid acceptance shall be addressed to the program administrator at the commission.

(6) All rejections of offers shall be directed to the commission within 72 hours after the offer is made. A future bid shall not be considered until a letter declining a previous offer is received.

History: 2004 AACCS.

R 393.52 Committee; creation; powers and duties.

Rule 52. (1) The committee shall consist of 11 members elected by the licensees. The members shall serve for a period of 2 years, except that 5 initial members shall serve for 1 year and 6 initial members shall serve for 2 years. Thereafter, all members shall be elected for 2-year terms. A quorum of the committee shall annually elect, by a majority vote, 1 of its members to serve as chairperson. Committee members shall be licensees.

(2) The committee shall do all of the following:

(a) Meet not less than 4 times annually at places designated by the committee. The business that the committee may perform shall be conducted at a public meeting held in compliance with 1976 PA 267, MCL 15.261. Public notice of the time, date, and place of the meeting shall be given in the manner required by 1976 PA 267.

(b) Actively participate with the commission in major administrative decisions and policy and program development decisions affecting the overall administration of the state's vending facility program.

(c) At the request of the licensees, receive and transmit grievances to the commission and serve as an advocate for the licensees in connection with grievances.

(d) Actively participate with the commission in the development and administration of a state system for the transfer and promotion of licensees.

(e) Actively participate with the commission in the development of training and retraining programs for licensees.

(f) Sponsor, with the assistance of the commission, meetings and instructional conferences for licensees within the state.

(g) Between regular meetings, carry on its duties through subcommittees or individual members designated by it.

(h) Receive advance written notice from the commission of matters within the committee's purview that are being considered for decision. The commission may waive the requirement of advance notice in an emergency.

(i) Initiate matters for consideration by the commission, and advise interested parties regarding the state's vending facilities program.

(j) Record and transcribe committee minutes.

(3) The subcommittee chairperson shall ensure that subcommittee members are notified of subcommittee meetings.

(4) Set-aside funds may be used for the support of committee activities, not to exceed 5% of the set-asides collected during the fiscal year.

(5) The commission shall have the ultimate responsibility for administering the state vending program and may reject the recommendations of the committee. If rejection occurs, then the commission shall notify the committee, in writing, within 15 working days of the commission's decision, informing the committee why the recommendation was rejected.

History: 2004 AACCS.

R 393.53 Committee election and representation.

Rule 53. The commission shall conduct the annual election of the members of the committee. The committee shall be fully representative of all licensees in the program on the basis of factors such as geography and vending facility type, with a goal of providing for proportional representation of licensees on federal, state, and other property.

History: 2004 AACCS.

R 393.54 Dispute resolution.

Rule 54. (1) Any decision of the program is appealable.

(2) Dispute resolution shall commence with an attempt to resolve problems between a licensee and a promotional agent through direct discussion. A licensee shall initiate dispute resolution by contacting the promotional agent and verbally communicating about the problem or by submitting a written communication stating the problem. The licensee's communication shall include a proposed solution. The promotional agent shall document the attempted resolution.

(3) If a promotional agent is unable to resolve the problem with the licensee, then a licensee may request an administrative review by the commission.

History: 2004 AACCS.

R 393.55 Administrative review.

Rule 55. (1) The purpose of an administrative review is to provide an informal procedure to enable a licensee to seek a remedy for dissatisfaction with an action of the commission arising from the operation or administration of the vending facility program that does not directly involve suspension and termination of a licensee's license. The commission shall make every effort to resolve licensee complaints at the administrative review level, since the resolution of disputes at the earliest possible time is mutually

advantageous to all parties concerned. Resolution efforts are not intended to discourage or interfere with the licensee's rights to pursue the formal full evidentiary hearing process. A licensee may request, in writing, an administrative review within 15 working days from the date of the mailing, or the receipt, of notification of the commission action sought to be reviewed. This review shall be by a member or members of the administrative staff of the commission who have not directly or indirectly participated in the commission action in question. A written request for an administrative review shall contain a description of the complaint and the remedy that is sought. The request for an administrative review shall include all of the following information:

(a) The action with which the complainant is dissatisfied and the date of the action.

(b) A citation to the promulgated rule that has been violated or a statement of the injury incurred by the complainant.

(c) A proposed remedy to the complaint.

(2) An administrative review shall be held at a time and place mutually agreed upon by the commission and the complainant. An administrative review shall be held during regular commission working hours at a district or local commission office. An administrative review shall be conducted within 15 working days of receipt by the commission of a written request, notwithstanding extenuating circumstances.

(3) Transportation, reader service, or other communication services, if needed, shall be arranged for the licensee by the commission.

(4) The requested actions and decisions resulting from the review shall be maintained as part of the official record of the administrative review process.

(5) If an informal administrative review does not resolve the dispute to the satisfaction of the licensee, then the licensee may submit a request, to the commission, for a full evidentiary hearing.

History: 2004 AACCS.

R 393.56 Evidentiary hearings.

Rule 56. (1) A licensee who is dissatisfied with an action of the commission arising from the operation or administration of the vending facility program may file a complaint with the commission requesting a full evidentiary hearing as required by the Randolph-Sheppard act of 1936, as amended, 20 U.S.C. §§107 to 107f, and the provisions of 34 C.F.R. §395.13 (July 1, 1981). When a licensee is licensed, he or she shall be informed, in writing, of his or her right to, and the procedures to be followed in obtaining, a full evidentiary hearing.

(2) To request a full evidentiary hearing, a licensee shall file a written request with the commission within 15 working days from the date of the mailing of the decision issued as a result of an administrative review. If a licensee's request for a hearing is not timely, and if there is no showing of good cause for a late request, then the commission's administrative review is final.

(3) The commission, which shall be considered a party to an appeal, shall have 15 working days from service of the request for a hearing to file a response with the hearings office.

(4) The hearings office shall have 15 working days after receipt of the agency response to notify both parties of the time, date, and place of the hearing. The hearing

shall be held at a time and place that is convenient to the licensee who is requesting a full evidentiary hearing.

(5) Hearings shall be conducted pursuant to the procedures in contested cases set forth in chapter 4 of 1969 PA 306, MCL 24.271 to 24.287.

(6) Witnesses may be subpoenaed by the hearings officer on his or her own motion. Witnesses requested by the parties may also be subpoenaed by the hearings officer if the evidence of the witnesses is considered necessary and is not cumulative. Witnesses subpoenaed shall be allowed fees at the rate fixed by law. Witnesses the commission subpoenas shall be paid by the commission out of the funds appropriated for its administration.

(7) Any person may be represented by an attorney or other representative or may represent himself or herself.

(8) The hearings officer shall render a written proposed decision after the record is closed.

(9) If all requested documentation is available to the commissioners, they shall have 60 calendar days from receipt of the proposed decision to render a final agency decision.

(10) If a licensee is dissatisfied with the final agency decision, then the licensee may request that an ad hoc arbitration panel be convened, as authorized by the provisions of 34 C.F.R. §395.13 (July 1, 1981).

(11) A licensee shall be advised that the decision of the ad hoc arbitration panel is final and binding on the parties, unless the decision is appealed pursuant to the provisions of the government organization and employees act, 5 U.S.C. §101 et seq.

History: 2004 AACS.

R 393.101 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.102 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.103 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.104 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.105 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.106 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.107 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.108 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.109 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.110 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.111 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.112 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.113 Rescinded.

History: 1983 AACS; 2004 AACS.

R 393.199 Rescission.

Rule 99. R 400.261 to R 400.276 of the Michigan Administrative Code, appearing on pages 3013 to 3016 of the 1979 Michigan Administrative Code, are rescinded.

History: 1983 AACCS.