

# REGULATION

<b>SPDOC No.:</b>  <u>CS-694305-13</u>	<b>Effective Date:</b>  <del>May 1, 2001</del> <u>November, 2005</u>	<b>Index Reference:</b>  <del>Integrity of Appraisal Methods,</del> Removal from Applicant Pools	<b>Regulation Number:</b>  <b>3.06</b>
<b>Issuing Bureau:</b>  Human Resource Services	<b>Rule Reference:</b> Rules: 2-7 (Drug and Alcohol Testing) 3-1 (Examinations) 3-2 (Applicant Pools and Recall Lists) 3-7 (Revocation of Appointment) 8-3 (Technical Complaints) 8-7 (Appeal to Civil Service Commission)	<b>Replaces:</b>  Reg. 3.06 (CS-69406943, <del>March 18</del> <u>May 1, 2001</u> )	
<b>Subject:</b> <b><u>SANCTIONS FOR VIOLATING APPRAISAL METHOD INTEGRITY CLASSIFIED SERVICE EMPLOYMENT SANCTIONS</u></b>			

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### 1. PURPOSE

This regulation establishes the guidelines standards for classified service employment sanctions ~~when a person's conduct violates the integrity of the appraisal process.~~ The Department of Civil Service is responsible for processing classified employment sanctions. The Department of Civil Service ~~staff, with approval from a group leader,~~ may ~~invoke impose~~ these sanctions ~~when staff determines that a person engaged in practices prohibited in rules 3-1.5 or 2-7.4(b)~~ for reasons established in civil service rules or regulations.

### 2. CIVIL SERVICE COMMISSION RULE REFERENCE

*Rule 2-7 Drug and Alcohol Testing*

\* \* \*

## 2-7.4 Penalties

### (a) Classified employees.

- (1) **All employees.** *An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its departmental work rules the range of penalties, including any mandatory penalties, for violating this rule.*
- (2) **Employee selected for test-designated position.** *An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a preappointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following occurs:*
  - (A) *The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed in the test-designated position.*
  - (B) *The employee is removed from all applicant pools for test-designated positions and is disqualified from any test-designated position for a period of 3 years.*
  - (C) *If the employee interferes with a test procedure or tampers with a test sample, the employee may also be disciplined as provided in subsection (a)(1).*

### (b) New hires.

- (1) **Rescission of conditional offer of employment.** *If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority must rescind the conditional offer of employment in writing. The written rescission must include notice of the complaint procedure and the 14-day time limit provided in subsection (b)(2). A person whose conditional offer of employment is rescinded must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.*
- (2) **Complaint by applicant.** *If a person claims that the rescission of the person's conditional appointment as authorized in subsection (b)(1) was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the person may file a written complaint with the state personnel director.*

- (A) *A complaint must be received by the state personnel director within 14 calendar days after the appointing authority mailed the written notice of the rescission of the conditional offer of employment and this complaint procedure. The person must also file a copy of the complaint with the appointing authority.*
- (B) *The director shall review the complaint and issue a decision under procedures authorized in the regulations.*
- (C) *If the director determines that the rescission was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the director may order an appropriate remedy, including, but not limited to, reinstating the offer of employment, ordering another drug test, or requalifying the person for appointment to the classified service.*
- (D) *Either the person or the appointing authority may appeal the director's final decision to the civil service commission.*

### **Rule 3-1 Examinations**

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#### **3-1.5 Integrity of Process**

*To be considered for appraisal or appointment, an applicant shall comply with the established procedures and processes.*

- (a) **Prohibited practices.** *During the application, appraisal, or appointment process, a person shall not do any of the following:*
  - (1) *Make any false statement or omissions of a material fact.*
  - (2) *Misrepresent education or experience.*
  - (3) *Engage in deception or fraud.*
  - (4) *Cheat.*
  - (5) *Compromise the integrity of the appraisal process.*
  - (6) *Violate rule 2-7 [Drug and Alcohol Testing].*
- (b) **Sanctions.** *If the department of civil service finds that an applicant has engaged in any prohibited act, the department may do any of the following:*
  - (1) *Cancel or limit the applicant's eligibility for state employment.*
  - (2) *Require the separation of the applicant from state employment.*
  - (3) *Impose any other or additional sanction that is appropriate.*

#### **Rule 3-2 Applicant Pools and Recall Lists**

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### **3-2.2 Removal from Applicant Pool**

*The department of civil service may remove a person from an applicant pool for any one of the following reasons*

- (a) Appointment.*
- (b) Separation or retirement from state service.*
- (c) Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.*
- (d) Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.*
- (e) Conduct that violates rule 3-1.5 [Integrity of Process].*
- (f) Expiration of an applicant pool or eligibility.*

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## **Rule 3-7 Revocation of Appointment**

### **3-7.1 Review of Appointments**

*Every appointment in the classified service is expressly subject to review by the department of civil service. If the department determines that an appointment violated a civil service rule or regulation, the department may order corrective action, including revocation of the appointment.*

### **3-7.2 Methods of Review**

*The department of civil service may review any appointment as part of the department's audit function or as the result of a technical appointment complaint.*

#### **(a) Audit review.**

**(1) Revocation of appointment.** *If the department of civil service audits an appointment and determines that the selection, appointment, or certification violated a civil service rule or regulation, the department may order corrective action, including revocation of the appointment. The department shall give written notice of the revocation to the appointing authority and the employee whose appointment is revoked.*

**(2) Subsequent technical complaint.** *An employee whose appointment is revoked, or the employee's appointing authority, may file a technical appointment complaint regarding a staff revocation order within 14 calendar days after the date the revocation order was issued. If a timely technical appointment complaint is filed, the revocation order is automatically stayed pending a decision or further order of the technical review officer.*

#### **(b) Technical appointment complaint by candidate.**

- (1) **Technical appointment complaint authorized.** *If an unsuccessful candidate files a timely technical appointment complaint under rule 8-3 [Technical Complaints] and the technical review officer determines that the challenged appointment violated a civil service rule or regulation, the officer may order corrective action, including revocation of the challenged appointment.*
- (2) **Notice to incumbent.** *If a technical appointment complaint is filed, the incumbent employee whose appointment is being challenged in the complaint is entitled to notice of the complaint and an opportunity to defend the appointment. If the technical review officer revokes an incumbent employee's appointment, that incumbent employee is bound by the determination of the technical review officer, including revocation of the incumbent employee's appointment.*

### **3-7.3 Effect of Revocation of Appointment**

*When the department of civil service or a technical review officer revokes an appointment, the employment status of the employee whose appointment is revoked is determined as follows:*

- (a) **Employee with continuing status.** *If the employee had continuing status at the time of the appointment, the employee is to be retained in a position within the principal department or autonomous agency that appointed the employee at a classification and level in which the employee had continuing status at the time of the appointment. If no such position is available within the department or agency at the time of the revocation, the employee may exercise employment preference.*
- (b) **Employee without continuing status.** *If the employee had no continuing status in the classified service at the time of the appointment, the appointing authority shall separate the employee from state employment, unless the employee has otherwise been properly appointed to another position.*

## **Rule 8-3 Technical Complaints**

### **8-3.1 Complaint Regarding Technical Decision Authorized**

*An authorized individual, appointing authority, or organization may file a technical complaint with the department of civil service, as provided in this rule and the regulations.*

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## **Rule 8-7 Appeal to Civil Service Commission**

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### **8-7.9 Appeal of Final Commission Decision to Circuit Court**

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(b) **Settlement of claims and lawsuits.** *Where a proposed agreement resolving a claim or lawsuit contains a provision pertaining to a decision, rule, or regulation of the commission, the appointing authority or its designee shall consult with the state personnel director or the director's designee before the agreement is finalized to insure that it is consistent with all civil service decisions, rules, and regulations. The commission is not bound by any provision pertaining to a civil service decision, rule, or regulation unless the director or the director's designee has approved the provision.*

## **3. DEFINITIONS**

### **A. Civil Service Commission Rule Definitions**

1. **Applicant** means a person who requests to participate in an appraisal process.
2. **Applicant pool** means a group of applicants whom the department of civil service has determined to be qualified.
3. **Appraisal method** means a technique used to evaluate job-related knowledge, skills, abilities, competencies, and other qualifications to determine eligibility for a position in the classified service.
4. **Classified Service** means the Michigan state classified civil service.

### **B. Additional Definition as used in this Regulation**

1. **Settlement** means a signed written agreement between the parties in a disputed matter.

## **4. STANDARDS**

### **A. There are two types of employment sanctions:**

1. A complete sanction is a sanction that prohibits the individual from being tested, placed in applicant pools, and hired anywhere in the classified service. A complete sanction may be permanent or for a limited period of time.
2. A specific sanction is a sanction that limits the individual's ability to be tested, placed in applicant pools, and be hired in a particular

classification and/or by a particular appointing authority, or in a particular work area. A specific sanction may be permanent or for a limited time period.

~~AB.~~ If the Department of Civil Service determines that a person has engaged in any act prohibited by rule 3-1.5 or rule 2-7.4(b), the Department may issue written sanctions. Sanctions may include, but are not limited to, the following:

1. Removal from all applicant pools and applicant referral mechanisms.
2. Prohibition from participating in future appraisal processes.
3. Ineligibility for appointment to a classified position.
4. Revocation of appointment and separation from the classified service.

~~B.~~ The Department of Civil Service may sanction any person who takes, sells, distributes, circulates, or uses examination material without the express authorization of the Department of Civil Service.

~~C.~~ If an appointing authority discovers that a person has engaged in any practice potentially prohibited by rule 2-7.1, rule 3-1.5, or rule 3-2.2(c), (d), or (e), the appointing authority must notify the Department of Civil Service at the time of discovery. Depending upon the nature and severity of the alleged violation, the Office of Compliance may conduct an investigation. The alleged violation may also be referred to the Department of State Police or other authorized police agency.

~~D.~~ If the Department of Civil Service determines that a person has engaged in any practice prohibited by rule 2-7.1, rule 3-1.5 or rule 3-2.2(c), (d), or (e), the department may issue written sanctions.

~~E.~~ If an appointing authority discovers that a person has engaged in any prohibited act, the appointing authority must notify the Department of Civil Service.

~~E.~~ An employee who has signed a legal release or settlement agreement (i.e., Workers' Compensation Agency "Release of all Claims and Future Employment with the State of Michigan" or "Agreement to Redeem Liability") related to classified service employment shall be sanctioned as provided for in the release or agreement.

~~B-F.~~ The Department of Civil Service may sanction any person who takes, sells, distributes, circulates, or uses examination material without the express authorization of the Department of Civil Service.

~~DG.~~ Nothing in this procedure regulation precludes the Department of Civil Service from initiating civil action against, or referring for criminal prosecution, anyone who has engaged in any prohibited act/practice.

- FH.** A sanction imposed by the Department of Civil Service under this regulation may be appealed through the technical ~~appeal~~ qualification complaint process, in accordance with rule 8-3 [Technical Complaints] and regulation 8.02 [Technical Classification and Qualification Complaints]. Exceptions: Complaints regarding penalties imposed under rule 2-7.4(b)(1) must be made according to the procedure in rule 2-7.4(b)(2). Sanctions resulting from a signed legal release or settlement may not be challenged in the grievance, technical complaint or appeal processes established in Chapter 8 of the civil service rules.
- GI.** A sanction that ~~does not state~~ states a determinable ending date (limited sanction) at the time of issuance continues in effect until the ~~person sanctioned files a written petition to lift the sanction and the Department of Civil Service grants the petition in writing~~ expiration date is reached, at which time the sanction is automatically lifted.
- HJ.** If a sanction does not state a determinable ending date at the time of issuance (permanent sanction), it ~~must~~ shall state a date after which the person is eligible to petition the Department of Civil Service to lift the sanction. The petition-eligible date ~~cannot~~ shall not exceed three years from the date the sanction is imposed. After the petition-eligible date, the person may petition the Department of Civil Service in writing to lift the sanction. If the department determines that the person does not represent a threat to the integrity of the process or the safety of the classified service, the department may lift the sanction. If the department refuses to lift the sanction, the person may appeal through the established technical qualification complaint process.

## 5. PROCEDURE

Responsibility	Action
Appointing Authority or Complainant	1. Files complaint alleging prohibited practices identified in rule <u>2-7.1</u> , rule <u>3-1.5</u> , or rule <del>2-7.4(b)</del> <u>3-2.2(c), (d), or (e)</u> .
Department of Civil Service	2. Investigates suspected violations, with or without, a formal complaint. 3. Reviews documentation provided by appointing authority or complainant and investigates further, <u>if necessary</u> . 4. Determines whether a prohibited act occurred. 5. If a prohibited act occurred, deter-

Responsibility	Action
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Appointing Authority

mines appropriate sanction in accordance with rule 3-1.5, rule 2-7.4(b), rule 3-2.2(c), (d), or (e), or rule 3-67, and this regulation.

6. Creates a ~~Enters the~~ sanction on the applicant ~~record on the ZP22.1 screen in the HRMN for the applicant or employee being sanctioned. and gives~~ Gives written notice of the sanction to the appointing authority, complainant, and the person sanctioned. Maintains documentation of the sanction.

7. Checks HRMN ZP22.1 before hiring a non-state employee applicant.

8. Checks HRMN Self Service, HR Statewide, Employee History (STWDE), Sanction Field, before hiring a state employee.

9. Contacts the Department of Civil Service with questions regarding sanctions.

NOTE: Any applicants (state employee or non-state employee) having a sanction code of S1 (complete sanction) may not be considered for any vacancy. Appointing authorities may contact civil service for information on applicants with a sanction code of S2 (partial sanction).

**CONTACT**

Questions regarding this regulation should be directed to the Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-373-3048 or 1-800-788-1766; or by e-mail to [MDCS-BHRS@michigan.gov](mailto:MDCS-BHRS@michigan.gov).

~~May 1, 2001~~ November 2005

**Reg. 3.06:** ~~Sanctions for Violating Appraisal Method Integrity~~ Classified Service Employment Sanctions

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**NOTE:** Regulations are issued by the State Personnel Director, under authority granted in the *State of Michigan Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.



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