

# REGULATION

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| <b>SPDOC No.:</b><br>07-14  | <b>Effective Date:</b><br>October 7, 2007  | <b>Index Reference:</b><br>Technical Complaints | <b>Regulation Number:</b><br><b>8.02</b>                   |
| <b>Issued By:</b><br>Technical Complaints   | <b>Rule Reference:</b><br>Rules: 4-2 (Position Classification Review)<br>4-3 (Appeals)<br>8-3 (Technical Complaints)<br>8-4 (Summary Dismissal of Grievance Appeal or Technical Complaint) |   | <b>Replaces:</b><br>Reg. 8.02<br>(CS-6940, March 18, 2001) |
| <b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules. |  |   |  |
| <b>Subject</b><br><b>TECHNICAL CLASSIFICATION AND QUALIFICATION COMPLAINTS</b>  |  |   |  |

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### 1. PURPOSE

This regulation establishes standards and procedures for filing and processing technical classification and qualification complaints, as authorized in rules 4-3 and 8-3.

### 2. CIVIL SERVICE COMMISSION RULE REFERENCE

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

**Rule 4-2 Position Classification Review**

*Civil service staff shall provide for both a periodic and ongoing review of positions in the classified service to ensure positions continue to be properly classified.*

- (a) **Position review.** *An appointing authority shall give notice to civil service staff of material changes in the duties and responsibilities that may impact the proper classification of a position. If the appointing authority does not notify the civil service staff of material changes, the employee occupying the position may initiate a position review by filing an updated position description and a written request with the civil service staff.*
- (b) **Frequency of review.** *The classification of an occupied position may be reviewed once in any 12-month period, unless otherwise approved by the state personnel director. When a significant, substantial, or material change has occurred in the duties and responsibilities, civil service staff may require the appointing authority to establish a new position that is properly classified. The classification of a position or appointment of an employee to a position constitutes a position review for the purposes of this rule.*
- (c) **Effective date of change.** *A change in the classification of a position based on a review under this rule is on a current basis, except as otherwise approved by the state personnel director.*

**Rule 4-3 Appeals**

*Only the appointing authority may appeal the classification of a newly established position. Either the appointing authority or an adversely affected employee may appeal a change in the classification or classification level of a previously established position through authorized technical appeal procedures.*

**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 civil service technical review staff, as provided in this rule and the regulations.*

- (a) **Technical classification complaint.** *An employee directly affected by a technical classification decision, or the employee's appointing authority, may file a technical classification complaint.*
- (b) **Technical qualification complaint.** *A person directly affected by a technical qualification decision or an appointing authority that requested a technical qualification decision may file a technical qualification complaint.*

\* \* \*

**8-3.2 Time Limits**

\* \* \*

- (b) **Other technical complaints.** *A technical classification complaint, technical qualification complaint, or technical disbursement complaint must be filed within*

*14 calendar days after the date the civil service staff issued the original technical decision.*

### **8-3.3 Civil Service Technical Review**

*(a) Referral to technical review officer. If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in accordance with the civil service rules and regulations.*

*(b) Technical review procedures.*

*(1) Hearing not authorized. A technical review officer is not authorized to conduct a hearing.*

*\* \* \**

*(3) Technical review decision. At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any. The final technical review decision shall be based on (1) the technical expertise of the review officer, (2) the civil service rules and regulations, (3) agency records, and (4) the documents and written submissions of the parties. In a review of a technical appointment complaint, the technical review officer shall also consider the written recommendation of the hearing officer on any certified question of fact.*

### **8-3.4 Further Appeal to Commission Authorized**

*An interested party in a technical review proceeding may file an appeal of a final technical review decision, including a summary dismissal of the technical complaint, to the civil service commission, as provided in the civil service rules and regulations.*

### **8-3.5 Effective Date of Decision of Technical Review Officer**

*(a) Technical classification or qualification review. A final technical review decision on a technical classification or qualification complaint is effective immediately upon issuance, unless a different effective date is specified in the decision.*

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## **Rule 8-4 Summary Dismissal of Grievance Appeal or Technical Complaint**

*A civil service adjudicating officer may summarily dismiss a grievance appeal or technical complaint for any of the following reasons:*

*(a) Not authorized. The adjudicating officer lacks the authority to consider the grievance appeal or technical complaint under the civil service rules and regulations for either of the following reasons:*

*(1) The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.*

*(2) The subject matter of the grievance, grievance appeal, or technical complaint is not reviewable in the forum selected.*

- (b) **Lack of jurisdiction.** *Civil service staff or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.*
- (c) **Untimeliness.** *The grievance, grievance appeal, or technical complaint was not filed timely.*
- (d) **Another action pending.** *Another civil service action has been initiated between the same parties involving substantially the same grievance or technical complaint.*
- (e) **Barred by prior claim.** *Substantially the same grievance or technical complaint was adjudicated to finality in another action between the same parties.*
- (f) **Failure to respond.** *A grievant or technical complainant fails to respond to a deficiency notice issued by civil service staff, as provided in the civil service rules and regulations.*

### 3. **DEFINITIONS**

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

1. **Adjudicating officer** means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.
2. **Good cause** means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.
3. **Interested party**, in any other technical review, means a party that filed a technical complaint or a written appearance in the technical complaint review proceeding.
4. **Party** means any of the following persons or organizations:

\* \* \*

(b) **Party**, in a technical classification review, means any of the following:

- (1) An employee whose classification is directly affected by a technical classification decision.
- (2) The appointing authority of an employee in subdivision (b)(1).
- (3) Any other interested person with a demonstrable special interest in the technical classification decision that is granted permission to participate in the review.

(c) **Party**, in a technical qualification review, means any of the following:

- (1) A person whose qualifications and fitness for a position in the classified service is directly affected by a technical qualification decision.

- (2) *An appointing authority that requested a technical qualification decision.*
- (3) *Any other interested person with a demonstrable special interest in the technical qualification decision that is granted permission to participate in the review.*

\* \* \*

- 5. **Technical complainant** means any of the following persons when directly affected and aggrieved by a technical decision:
  - (a) *An applicant for employment.*
  - (b) *A classified employee.*
  - (c) *An appointing authority.*
  - (d) *The office of the state employer.*
  - (e) *Any other person or organization specifically authorized by civil service rule or regulation to file a technical complaint.*
- 6. **Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.
- 7. **Technical decision** includes each of the following individual decisions:
  - (a) **Technical classification decision** means a civil service staff decision (1) classifying a position in the classified service or (2) making a working-out-of-class determination.
  - (b) **Technical qualification decision** means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.

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## 4. **STANDARDS**

### A. **Filing of Complaints.**

- 1. An employee or appointing authority directly affected by a technical decision made by the Office of Classifications and Selections may file a technical complaint with Civil Service, Technical Complaints. The complaint must be submitted using the appropriate form, either the Technical Classification Complaint form (CS-212a) or the Technical Qualification Complaint form (CS-212b). A complainant must simultaneously file a copy of the complaint with the appointing authority for which a complainant works.
  - a. An employee organization cannot file a complaint regarding a technical decision. An employee organization is limited to serving as representative for the complainant.
  - b. A complaint for a position in a preauthorized classification is accepted only if Civil Service staff has made a technical decision. If an appointing

authority denies a preauthorized reclassification, the incumbent must first file a request for a position review with Civil Service, in accordance with regulation 4.03 [Employee Generated Position Reviews].

- c. Disputes concerning the evaluation of an incumbent's work performance are not subject to technical complaints, but may be a subject for grievance, in accordance with regulation 8.01 [Grievance and Grievance Appeal Procedures], or the appropriate collective bargaining grievance procedure.
  - d. Incumbents in the same classification may file a joint complaint of a denied or modified classification action. The incumbents must be performing the same duties and responsibilities and must have occupied their positions for the equivalent of one-year of full time service. Only incumbents who sign the technical complaint form (CS-212a or CS-212-b) are considered complainants.
2. **Complaint.** The complaint must include the following:
- a. All information required in Part A of the technical complaint form (CS-212a or CS-212b) for each complainant.
  - b. A clear and concise description of the technical decision being questioned.
  - c. A complete statement of why the technical decision (1) violated article 11, section 5 of the Michigan Constitution; (2) violated a Civil Service rule or regulation; or (3) was arbitrary and capricious.
  - d. Any documentary evidence that the complainant believes supports the technical complaint.
  - e. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of Civil Service staff to grant.
  - f. The signature of each complainant.
  - g. The name, mailing and email address of the complainant's representative, if any.
3. **Time Limitations for Filing Technical Complaints.** To be timely, the complaint must be received by Civil Service, Technical Complaints within 14 calendar days after the mailing date to the complainant of the technical decision.
4. **Extension for Filing.** The technical review officer may grant an extension of time for filing if, before the expiration of the required time for filing, the technical complainant shows sufficient justification for the extension.

## **B. Administrative Denial of Complaint.**

1. **Reasons for Administrative Denial.** In addition to and in accordance with rule 8-4, a technical classification or qualification complaint may be administratively dismissed without prior notice for any of the following reasons:

- a. The complaint fails to set forth allegations with sufficient particularity to permit review.
- b. The complaint involves one or more of the following actions, decisions, and matters that are not subject to review:
  - (1) Michigan Civil Service Commission Rules.
  - (2) Civil Service regulations, standards, and procedures.
  - (3) The official classification plan, including classification specifications, job-evaluation factors, and the policies, procedures, and other official publications for administration of the classification system.
  - (4) The establishment, abolishment, or modification of a classification.
  - (5) The job evaluation factoring for a classification.
  - (6) The pay range assigned to a classification.
  - (7) Classifications preauthorized for position establishment and reclassification to agencies.
  - (8) Individual position freezes.
  - (9) Appraisal method and content.
  - (10) Appraisal determination, including section/item weights, passing points, and experience and education rating charts.
  - (11) Appraisal method administration decisions, including the following:
    - (a) Replacing or combining applicant pools.
    - (b) Scheduling examinations and filing requirements.
    - (c) Limitations on appraisal participation.
- c. The complaint fails for other good and sufficient reason to warrant further review.

### C. Technical Review Decisions.

1. **Complaint Investigation.** A technical review officer is not authorized to conduct a hearing, but may meet with the complainant or other interested parties to discuss the complaint.
2. **Decisions.**
  - a. The technical review officer shall review *de novo* all submissions and decide the matter based on the submissions, agency records, Civil Service rules and regulations, and technical expertise.
  - b. The decision of a technical review officer shall contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission, as provided in regulation 8.05 [Employment Relations Board Appeal Procedures].

#### D. Implementing Technical Classification Complaint Decisions.

1. **Effective Date of Complaint Decisions.** The effective date assigned to a technical classification complaint decision is the beginning date of the pay period in which the original request for a position review was received. If the appointing authority submitted the request for a position review, the effective date is assigned in accordance with regulation 4.04 [Effective Dates for Classification Actions]. If the employee submitted the position review request, the effective date is assigned in accordance with regulation 4.03 [Employee Generated Position Reviews].
2. **Parties Granted Relief.** Only complainants listed on the Request for Technical Complaint form (CS-212a or CS-212b) may obtain full relief, including the effective date of the original position review. Other similarly situated individuals may be granted the same classification relief, but on a prospective basis only.
3. **Effects of Vacating a Position.** If an incumbent vacates a position before completing the complaint process and ultimately prevails, the following processes occur:
  - a. The employee who complained about a classification action receives compensation in the awarded classification retroactive to the effective date of the original position review and up to the date the employee vacated the position.
  - b. The employee has reinstatement rights in the awarded classification, as described in the Civil Service rules and regulations.
  - c. If the employee vacated the position as a result of a reduction in force, the employee's name is placed on the appropriate recall list for the awarded classification. This does not require the bumping chain to be reinstated.
  - d. The awarded classification is limited to the position that gave rise to the complaint and cannot be transferred to other positions.
4. **Effect of Decision on Subsequent Employee.** In a successful complaint, when a new incumbent has been appointed to the position, the position remains at the previous classification until the successor has satisfactorily performed the duties for the equivalent of one-year full time service. The position may be reclassified to the awarded classification sooner if the successor qualifies for an early reclassification in regulation 4.05 [Frequency of Review of Positions].

#### E. Grievance Settlements.

An appointing authority cannot unilaterally settle a classification or qualification dispute through a grievance or arbitration proceeding covered by a collective bargaining agreement or the Grievance and Grievance Appeal Procedures.

**5. PROCEDURE**

| Responsibility                  | Action   |
|---------------------------------|--|
| Civil Service                   | 1. Mails technical decision.   |
| Complainant                     | 2. Prepares technical complaint and submits to Civil Service, Technical Complaints.<br>3. Provides a copy of the technical complaint to the appointing authority.  |
| Technical Complaints            | 4. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint.<br>5. If the complaint is untimely or fails to meet the requirements of this regulation, dismisses the technical complaint.<br>6. Obtains submissions from appointing authority and agency staff, if required.<br>7. If necessary, meets with the technical complainant and any other interested persons to review and discuss the complaint, with notification to the appointing authority.<br>8. Prepares and issues technical complaint decision. |
| Complainant or Interested Party | 9. May apply for leave to appeal to the Civil Service Commission.  |

**CONTACT**

Questions regarding this regulation should be directed to Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-335-4970, 517-373-3039 or 1-800-788-1766.