

# REGULATION

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<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>	<b>DISBURSEMENTS FOR PERSONAL SERVICES OUTSIDE THE CLASSIFIED SERVICE</b>		

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### **1. PURPOSE**

This regulation establishes supplementary standards, guidelines, and procedures for an appointing authority to request approval from Civil Service to make disbursements for personal services performed by persons outside the classified work force.

## 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 7-1 Disbursements for Personal Services outside the Classified Service***

#### ***7-1.1 Requirements***

*An appointing authority shall not make or authorize disbursements for personal services outside the classified service until the provisions of article 11, section 5, of the constitution and the civil service rules and regulations have been complied with in every particular.*

#### ***7-1.2 Disapproval by State Personnel Director***

*If an appointing authority makes or authorizes disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state personnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.*

### ***Rule 7-2 Jurisdiction***

#### ***7-2.1 Civil Service Review or Approval not Required***

*An appointing authority is not required to seek or obtain civil service approval for any of the following disbursements outside the classified service:*

- (a) **Not personal services.** Disbursements that are not for personal services.*
- (b) **Exempt and excepted employees.** Disbursements to persons occupying positions excepted from the classified service by article 11, section 5, of the constitution, or exempted by the state personnel director under rule 1-9.2 [Exempt Positions].*
- (c) **Mixed disbursements.** Disbursements for personal services that are included with other disbursements if (1) the predominant purpose of the mixed disbursements is not for personal services and (2) the personal services are logically or practically related to the predominant purpose of the mixed disbursements.*
- (d) **Grants.** Disbursements of grants.*
- (e) **Federal law.** Disbursements under federal law if the use of the classified service is not an option.*
- (f) **Intergovernmental disbursements.** Disbursements to any of the following governments or their political subdivisions:
  - (1) One or more of the states of the United States.*
  - (2) The United States.*
  - (3) Canada.**
- (g) **Intragovernmental disbursements.** Disbursements to any of the following public bodies:*

- (1) *An agency of the executive, judicial, or legislative branch of the state of Michigan.*
- (2) *A political subdivision of the state of Michigan, including, but not limited to, a county, township, city, village, or district.*
- (3) *Any governmental body created by agreement of any two or more counties, townships, cities, villages, or districts, as authorized by law.*
- (4) *A nonprofit community board, agency, or corporation created under local, state, or federal law to exercise a governmental function.*
- (5) *A public university, public college, public community college, or other public school.*

**(h) Court ordered disbursements.** *Disbursements made pursuant to a court order requiring disbursements for personal services, if the court retains jurisdiction of the matter or the matter is subject to further court review.*

### **7-2.2 Complaints**

*A complaint that an appointing authority has made or authorized disbursements for personal services in violation of article 11, section 5, of the constitution or a civil service rule or regulation must be filed with the state personnel director under the procedures authorized in rule 7-9 [Complaints and Investigations].*

### **Rule 7-3 Standards for Disbursements for Personal Services**

*Except as provided in rule 7-2 [Jurisdiction], an appointing authority may make or authorize disbursements for personal services outside the classified service only if the personal services meet one or more of the following standards:*

- (a) **Standard A.** *The personal services are temporary, intermittent, or irregular.*
- (b) **Standard B.** *The personal services are (1) so specialized, technical, peculiar, or unique that they are not recognized as normal to the classified service or (2) the appointing authority is unable to recruit enough qualified candidates willing to accept a classified position.*
- (c) **Standard C.** *The personal services involve (1) the use of equipment, materials, or facilities not reasonably available to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.*
- (d) **Standard D.** *The personal services would be obtained at substantial savings over the proposed period of disbursements when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the proposed period of disbursements, substantial savings would not likely be realized over the long term. Savings are “substantial” if the average annual savings over the proposed period of disbursements are equal to or greater than the minimum required savings computed using the table below:*

<b>Col. 1 Projected Average Annual Disbursements:</b>		<b>Col. 2 Minimum Required Average Annual Savings Must Equal:</b>
From:	To:	
\$ 1	\$ 25,000	25% of average annual cost
25,001	50,000	20% (minimum \$6,250)
50,001	100,000	15% (minimum \$10,000)
100,001	200,000	12.5% (minimum \$15,000)
200,001	500,000	10% (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	and above	5% of avg. annual cost

#### **Rule 7-4 Disbursements to Special Personal Services Employees**

An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

- (a) **Standards.** The personal services meet Standard A or Standard B in rule 7-3.
- (b) **Procedures.** The disbursements for personal services have been approved under the request procedures in rule 7-6 or preauthorized under rule 7-7.

#### **Rule 7-5 Disbursements to Independent Contractors**

An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

- (a) **Standards.** The personal services meet one or more of the standards in rule 7-3.
- (b) **Procedures.** The disbursements for personal services have been approved under the request procedures in rule 7-6 or preauthorized under rule 7-7.

#### **Rule 7-6 Prior Written Approval by Civil Service Staff**

##### **7-6.1 Procedure**

An appointing authority may submit to civil service staff a request for approval to make disbursements for personal services outside the classified service. Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate information submitted by other interested parties, and (3) issue a written technical decision. The staff shall approve the request, with or without conditions, or shall deny the request.

##### **7-6.2 Approval**

Civil service staff approval of a request to make disbursements for personal services outside the classified service must include the following:

- (a) The maximum aggregate dollar amount the appointing authority is authorized to disburse for the requested personal services during the approved period.
- (b) The specific personal services that the appointing authority is authorized to purchase outside the classified service with approved disbursements.
- (c) The period during which the appointing authority is authorized to make approved disbursements.
- (d) Any other requirement, condition, or restriction on the disbursements necessary to ensure that the appointing authority complies with article 11, section 5, of the constitution and the civil service rules and regulations.

### **7-6.3 Effective Date of Staff Decision**

(a) **One interested party.** *If the appointing authority is the only interested party participating in the civil service staff review, the technical decision is effective upon its issuance, unless a later date is specified in the technical decision.*

(b) **Two or more interested parties.**

(1) **Effective date.** *If more than one interested party participates in the staff review, the technical decision is effective 14 calendar days after the date the technical decision is issued, unless a different date is specified in the technical decision or the state personnel director issues a stay.*

(2) **Request for stay.** *An interested party intending to appeal the technical decision may file a request that the state personnel director stay the effective date of the decision pending appeal. The request for a stay must be received by the director within 10 calendar days after the date the technical decision is issued. The director may stay the effective date of the technical decision pending a technical appeal if the director determines that (1) it is unlikely that the request meets any of the standards for approval and (2) a stay is in the best interest of the classified service.*

### **7-6.4 Complaint Regarding Technical Decision**

*An interested party who participated at the civil service staff review may file a technical disbursement complaint as provided in rule 8-3 [Technical Complaints]. The technical complaint must be received by the civil service technical review staff and all other interested parties within 14 calendar days after the date the technical disbursement decision is issued.*

### **7-6.5 Compliance**

*An appointing authority shall comply with all requirements, conditions, and restrictions established in the civil service approval of a request to make or authorize disbursements for personal services outside the classified service. By way of example only, an appointing authority is prohibited from doing any of the following:*

- (a) *Disbursing funds in excess of the approved maximum aggregate dollar amount.*
- (b) *Disbursing funds for personal services other than approved personal services.*
- (c) *Disbursing funds for personal services performed outside the period approved for the disbursements.*
- (d) *Failing to comply with any requirement, condition, or restriction established in the civil service approval.*

## **Rule 7-7 Preauthorized Approval**

### **7-7.1 Publication of List**

*Civil service staff shall establish and publish a list of personal services deemed to meet one or more of the standards of rule 7-3 without further review.*

### **7-7.2 Use of Preauthorized Approval**

*An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or obtaining prior written approval of*

*civil service staff under rule 7-6. When making or authorizing disbursements for preauthorized personal services, the appointing authority shall comply with all requirements, conditions, and restrictions established by civil service staff for the use of the list of preauthorized personal services.*

### **7-7.3 Reporting**

*As a condition of using the preauthorized list, the appointing authority shall report all disbursements for preauthorized personal services as required by statute and the civil service regulations.*

### **7-7.4 Additions to Preauthorized List**

*An appointing authority seeking to add personal services to the list of preauthorized personal services may file a request with civil service staff under the procedures authorized in rule 7-6. Civil service staff approval of a request to add personal services to the list of preauthorized personal services must include the following:*

- (a) A description of the particular type of personal services being added to the list of preauthorized personal services.*
- (b) The standard in rule 7-3 that the added personal services is deemed to satisfy.*
- (c) Any other requirement, condition, or restriction on the use of the preauthorization necessary to ensure that the appointing authority complies with article 11, section 5, of the constitution and the civil service rules and regulations.*

### **7-7.5 Complaints or Appeals**

*Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process must be brought under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list must be brought by an interested party under the technical appeal procedures in rule 8-3 [Technical Complaints].*

## **Rule 7-8 Emergency Disbursements**

*An appointing authority may authorize or make disbursements for personal services outside the classified service without prior civil service approval when an emergency occurs. The emergency personal services must not continue beyond 28 calendar days without approval of civil service staff. Civil service staff may approve continuation of emergency services for an additional period not to exceed 28 calendar days.*

## **Rule 7-9 Complaints and Investigations**

### **7-9.1 Investigation by State Personnel Director**

- (a) **Complaint required.** Any person who alleges that an appointing authority has made or authorized disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution or a civil service rule or regulation must file a complaint with the state personnel director and serve a copy on the appointing authority and the state employer.*
- (b) **Examples of violations.** Alleged violations for which a complaint must be filed include, but are not limited to, the following:*

- (1) *The appointing authority has made or authorized disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution.*
- (2) *The appointing authority has made or authorized disbursements for personal services outside the classified service without obtaining approval required by the civil service rules or regulations.*
- (3) *The appointing authority has made or authorized any of the following disbursements for personal services outside the classified service:*
  - (A) *Disbursements in excess of the maximum aggregate dollar amount approved by civil service.*
  - (B) *Disbursements for personal services other than those approved by civil service.*
  - (C) *Disbursements for personal services performed outside the period approved by civil service.*
  - (D) *Disbursements that do not comply with a requirement, condition, or restriction established in the civil service approval.*
- (4) *The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.*
- (5) *The appointing authority made or authorized improper preauthorized disbursements for personal services.*
- (6) *The appointing authority failed to report disbursements for personal services as required by law, including the civil service rules and regulations.*
- (7) *The appointing authority failed to document adequately its compliance with the civil service rules and regulations.*

### **7-9.2 Action by State Personnel Director**

*After reviewing the complaint, the state personnel director may act on the complaint or may appoint a person to conduct an inquiry and make a recommendation for action to the director. If the director finds that an appointing authority has made or authorized disbursements for personal services outside the classified service contrary to article 11, section 5, of the constitution or a civil service rule or regulation, the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the civil service rules and regulations.*

### **7-9.3 Appeal of Director's Determination**

*A determination of the state personnel director under rule 7-9 is final unless a party to the inquiry files an application for leave to appeal to the civil service commission under rule 8-7 [Appeal to Civil Service Commission] within 28 calendar days after the date the director's determination is issued.*

### **Rule 7-10 Audit and Enforcement**

*The civil service staff shall periodically audit appointing authorities to ensure that they are complying with article 11, section 5, of the constitution and the civil service rules and regulations governing disbursements for personal services outside the classified*

*service. If the state personnel director determines that an appointing authority has not substantially complied with article 11, section 5, of the constitution or the rules and regulations, the state personnel director may (1) require the appointing authority to file a written request and obtain prior written approval from civil service staff for all disbursements for personal services outside the classified service and (2) take such other action as will reasonably ensure that the appointing authority complies with article 11, section 5, of the constitution and the rules and regulations in the future.*

### **Rule 7-11 Contract Requirements**

*Every contract by a state agency that authorizes disbursements for personal services outside the classified service must contain a provision that the state is obligated to comply with article 11, section 5, of the constitution and applicable civil service rules and regulations. The provision must also give notice that, notwithstanding any other provision of the contract to the contrary, the state personnel director is authorized to disapprove contractual disbursements for personal services if the director determines that the contract or the disbursements violate article 11, section 5, of the constitution or applicable civil service rules and regulations. The failure of an appointing authority to require such a provision in a contract does not limit or restrict the authority of the civil service commission and the director to disapprove disbursements for personal services outside the classified service.*

### **Rule 7-12 Limitations**

*Approval by civil service staff under this chapter does not relieve an appointing authority of an obligation under any other law or non-civil service rule or regulation that may apply to a contract. Approval by civil service staff under this chapter does not constitute approval of any contract or agreement by the state of Michigan under which an appointing authority makes or authorizes approved disbursements for personal services outside the classified service.*

## **3. DEFINITIONS**

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

1. **Contractor** means an independent contractor or special personal services employee who enters into a contract with a state agency to provide personal services.
2. **Disbursements for personal services outside the classified service** means disbursements of appropriated funds by a state agency for the personal services of a person who is not a classified employee of the state.
3. **Grant** means a congressional or legislative appropriation that is passed through a state agency directly to, and for the benefit of, the recipient of the grant.
4. **Independent contractor** means an individual contractor or an employee of a contractor who provides personal services and who is not an employee of the state of Michigan.
5. **Party** means any of the following persons or organizations:

\* \* \*

(d) **Party**, in a review of a technical disbursement decision, means any of the following:

- (1) The appointing authority that files a request under rule 7-6 [Prior Written Approval by Civil Service Staff] or 7-7 [Preauthorized Approval] regarding disbursements for personal services.
- (2) An exclusive representative of a classified employee with a direct interest in the technical disbursement decision.
- (3) A nonexclusively represented classified employee with a direct interest in the technical disbursement decision.
- (4) A limited recognition organization appearing on behalf of a classified employee with a direct interest in the technical disbursement decision.
- (5) The office of the state employer.
- (6) Any other person or organization with a demonstrable special interest in the technical disbursement decision who (1) petitions to participate in the civil service staff review and (2) is authorized by civil service staff to participate in the review.

\* \* \*

(f) **Party**, in an inquiry about a complaint filed with the state personnel director under rule 7-9[Complaints and Investigations], means any of the following:

- (1) The person filing the complaint.
- (2) The appointing authority that made or authorized the questioned disbursements.
- (3) The office of the state employer.
- (4) Any other person or organization with a demonstrable special interest in the complaint who (1) petitions the state personnel director to participate in the inquiry and (2) is authorized by the director to participate in the inquiry.

6. **Personal services** means work performed for the direct benefit of the state by an individual for compensation.
7. **Preauthorized** means the specific authorization granted to an appointing authority to process a transaction in accordance with civil service rules and regulations without prior civil service review.
8. **Request** means a request submitted by an appointing authority to civil service staff under rule 7-6 [Prior Written Approval by Civil Service Staff], for approval to make disbursements for personal services to a person who is not a classified state employee, or under rule 7-7 [Preauthorized Approval], to add personal services to the preauthorized list.
9. **Technical decision** includes each of the following individual decisions:

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- (c) *Technical disbursement decision* means a civil service staff decision authorized under rule 7-6 [Prior Written Approval by Civil Service Staff] or rule 7-7 [Preauthorized Approval] regarding disbursements for personal services.

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## B. Additional Definitions as used in this Regulation

1. **Combined Personal Services Request** means a request by an appointing authority that combines two or more distinct personal services in a single request.
2. **Commodity Code** means a five to eleven digit number that identifies a specific type of service.
3. **Emergency Service** means a situation where personal services are required to immediately remedy and diminish the consequences of an unforeseen need. The emergency must be of such a nature that disbursements are required in less time than can be accomplished through normal review processes.

## 4. STANDARDS

### A. Jurisdiction.

1. **Review and Approval Required.**
  - a. Civil Service review and approval are required for disbursements for personal services outside the classified service that are within the jurisdiction of the Civil Service Commission (Commission).
  - b. **Pass-through funds.** Civil Service review and approval are required for the disbursement of funds passed through a state agency when the agency has discretion to determine the service provider.
2. **Request for Jurisdictional Determination.** An appointing authority may file a written request with Civil Service for a jurisdictional determination of whether a proposed disbursement is within the jurisdiction of the Commission.
  - a. The request must contain a complete description of the proposed personal services and the reasons why the disbursements for such services should be found outside the jurisdiction of the Commission.
  - b. If Civil Service staff determines that the Commission has jurisdiction over the proposed disbursements, the appointing authority must submit a request to disburse funds for personal services (CS-138) and obtain Civil Service approval before disbursing any funds.
  - c. If Civil Service determines that the Commission has no jurisdiction over the proposed disbursement, the appointing authority may disburse the funds without submitting a CS-138.
  - d. A determination by Civil Service that a proposed disbursement is outside the jurisdiction of the Commission does not mean that the commodity

code associated with that disbursement will always be deemed outside the Commission's jurisdiction.

- e. A jurisdictional determination by Civil Service may only be appealed in accordance with rule 7-2.2.

### 3. Review or Approval Not Required.

- a. An appointing authority is not required to seek or obtain prior approval from Civil Service for any disbursements listed in rule 7-2.1.
- b. Civil Service maintains on its website a list of personal services for which disbursements are deemed outside the jurisdiction of the Commission. An appointing authority is not required to seek or obtain prior approval from Civil Service for disbursements for any service on this list.
  - (1) Civil Service may modify the list at any time.
  - (2) If an appointing authority believes a specific service should be added to the list, the appointing authority may file a written request to add the service.
    - (a) The request should contain a complete description of the personal services at issue and the reason why the services are believed to be outside the jurisdiction of the Commission.
    - (b) If Civil Service determines that the personal services are not within the jurisdiction of the Commission, the service will be added to the list.
  - (3) A determination by Civil Service that a particular service is within the jurisdiction of the Commission cannot be appealed.
- c. Civil Service reserves the right to individually review personal services provided under the list of personal services outside the jurisdiction of the Commission to verify that the services are outside the Commission's jurisdiction. Civil Service may require an appointing authority to justify its use of a commodity code on the listing of services outside the jurisdiction of the Commission in a specific instance. Civil Service may modify, restrict or revoke the future use of the non-jurisdictional listing if Civil Service determines that the appointing authority has improperly used the non-jurisdictional service.

## B. Disbursements for Personal Services Outside the Classified Service.

Rule 7-3 provides the standards used to determine if appropriated funds can be disbursed for personal services obtained outside the classified service.

### 1. Standard A Guidelines.

- a. **Examples of Temporary, Intermittent, or Irregular Personal Services:**
  - (1) Services that are needed so sporadically, randomly, or intermittently that the need for such personal services cannot be reliably predicted.

(2) Services for which the need is so temporary or limited that it is not practical to use the classified service.

b. **Sunset within 36 Months.** Temporary full-time personal services may be approved under Standard A if funding or the need for the personal services will not continue beyond 36 months.

(1) The appointing authority must provide particularized proof that the specific funding, or the need for the personal services to be provided, is limited to no more than 36 months.

(2) The intended personal services must meet a particularized limited duration need.

(3) This guideline does not authorize approval of the (a) renewal of a request previously approved under this guideline, (b) request based on general uncertainty about future funding, or (c) request for personal services which are likely to be provided indefinitely even though the funding is limited to less than 36 months.

## 2. Standard B Guidelines.

a. **Examples of Uncommon Personal Services include:**

(1) Personal services for which it is extremely difficult to recruit candidates willing to accept a classified position. The appointing authority must certify that an inadequate applicant pool exists and provide dates the job was posted on the Civil Service website, advertised in newspapers and publications, included in job fair announcements, or any other information that supports the certification.

(2) Personal services that require expertise outside the normal scope of the classified service.

(3) Personal services that are specialized or rare.

(4) Personal services that reasonably require the provider to be outside the classified work force, such as expert testimony, independent audit services, and dispute-resolution and arbitration services.

(5) Personal services that are necessary because they are integrated with the purchase of proprietary commodities and cannot be segregated from the primary commodities.

b. **Personal Services not Classified.** These include personal services not typically provided by the classified service and recognizes that the classified service cannot reasonably include all possible personal services in its classification scheme. The absence of the personal services from the classification scheme may provide some justification for a request under these standards.

### 3. **Standard C Guideline.**

**Costs.** An analysis of “cost” under Standard C includes, but is not necessarily limited to, simple dollar cost comparisons. An analysis under this standard may consider such qualitative factors as the (1) time and effort required to create and manage needed classified positions, (2) impact of the new personal services on the agency mission, and (3) likelihood of the personal services continuing into the future, or the like. If it is determined that the costs of the goods exceeds the costs of associated personal services, Civil Service lacks jurisdiction over the request and shall so specify in its technical decision.

### 4. **Standard D Guidelines.**

#### a. **Wage and Benefit Standards.**

(1) The State Personnel Director shall periodically develop and publish on the Civil Service website and in written form the *Civil Service Guide for Calculating Standard Cost Savings*. The guide shall provide standardized formulas and other electronic processes to assist in identifying and documenting costs associated with contracting for personal services in comparison to costs of utilizing the classified service.

(2) The State Personnel Director shall publish standardized rates that establish minimum thresholds to be applied in the preparation of a Standard D cost analysis. The information may include, but is not limited to, salary and wages, fringe benefits, group insurance, inflation, indirect costs, unemployment insurance, workers’ compensation insurance, retirement, FICA costs, contract monitoring costs, and the like.

b. **Content of Cost Savings Submission.** Appointing authorities must adhere to the methods and guidelines provided in the *Civil Service Guide for Calculating Standard Cost Savings* when submitting requests under Standard D.

### 5. **Table of Permissible Uses of Standards.** This table summarizes the permissible uses of each of the two procedures available for approving disbursements for personal services.

To find if an appointing authority can use a particular procedure to approve a particular type of service, go to the cell at the intersection of the procedure (major column), type of contractor (minor column), and standard (row). If the cell contains “**OK**,” the particular procedure may be used to obtain approval. If the cell contains “**N/A**,” the procedure is not available for use.

Standards Under Rule 7-3	Prior Approval Required Rule 7-6		Preauthorized Approval Rule 7-7	
	Hire an SPS Employee	Hire an Independent Contractor	Hire an SPS Employee	Hire an Independent Contractor
<b>Standard A</b> <i>(Temporary Services)</i>	OK	OK	OK	OK
<b>Standard B</b> <i>(Unique Services)</i>	OK	OK	OK	OK
<b>Standard C</b> <i>(Lack of Equipment)</i>	N/A	OK	N/A	OK
<b>Standard D</b> <i>(Cost Savings)</i>	N/A	OK	N/A	N/A

**C. Disbursements to Special Personal Services (SPS) Employees.**

**1. Requirements for Hiring SPS Employees.**

- a. An appointing authority shall not hire or make disbursements for personal services to a special personal services (SPS) employee unless Civil Service has approved the disbursements *in advance*. This means that an agency must either file a request under rule 7-4 or have already obtained preauthorized approval under rule 7-7.
- b. An SPS employee may only be hired if the personal services meet either Standards A or B in rule 7-3. An appointing authority may not hire an SPS employee under Standards C or D.

**2. Guidelines for Hiring SPS Employees.**

- a. **Cost Savings and SPS Employees.** Cost savings may be considered in evaluating submissions under both Standard A and Standard B. However, the cost savings tests under Standard C and Standard D are not applicable to SPS employees. Therefore, Civil Service will not approve the hiring of an SPS employee *solely* on the basis that it is less expensive to hire an SPS employee than a classified employee.
- b. **Hiring Freeze and SPS Employees.** The governor and appointing authorities occasionally impose hiring freezes, budget limitations, head count limitations, and other restrictions on hiring classified employees as mechanisms to control costs. Since cost savings alone are insufficient justification for hiring SPS employees, Civil Service will not approve the hiring of an SPS employee *solely* for the reason that there is a hiring freeze, budget limitation, head count limitation, or other management-imposed limitation on hiring classified employees. In such cases, independent contractors may be used if the contract meets one or more of the standards in rule 7-3.

**D. Disbursements to Independent Contractors.**

Disbursements to an independent contractor for personal services may be made only subsequent to the Civil Service staff determination that the appointing authority's request meets one or more of the four standards in rule 7-3.

**E. Prior Written Approval by Civil Service Staff.**

1. **Submission of Request by Appointing Authority.** Unless otherwise authorized, an appointing authority shall submit a new request or an amendment to an existing request to Civil Service and receive approval before it authorizes or makes a disbursement for personal services outside the classified service. The request shall include the following:
  - a. A CS-138 that provides the proposed beginning and ending dates of the requested services, a detailed description of the requested personal services, rationale as to how the service meets the standard(s) selected, the total dollar amount of the disbursement request, and all other required information.
    - (1) Amendments to an expired CS-138 are prohibited, except when Civil Service determines good cause has been demonstrated by the appointing authority.
    - (2) Amendments to a currently active CS-138 are not appropriate when approval would result in both the addition of a year or more of service and the corresponding funds.
  - b. An analysis that identifies the standard(s) in rule 7-3 upon which the appointing authority relies and a justification that details the relationship between the personal services and the standard(s).
  - c. Any additional information to be considered by Civil Service staff reviewing the request. If additional information is provided by the appointing authority, a copy must also be provided to all interested parties.
  - d. Certification that each appropriate labor organization has been given written notice, if required, in accordance with provisions contained in the collective bargaining agreement before submission of the CS-138 to Civil Service. This certification requirement applies to both new and existing CS-138 submissions. The appointing authority shall retain a copy of the signed transmittal. All inquiries regarding union notice requirements should be directed to the Office of the State Employer.
  - e. Certification that a notice of intent to contract has been posted for work generally performed by nonexclusively represented employees.
  - f. The numbers and classifications of state classified employees who will or may be terminated, laid off, demoted, or bumped as a result of the implementation of the contract for personal services.
  - g. Certification that individual notification has been provided to nonexclusively represented employees whose positions will be abolished as a result of the contract for personal services.

2. **Civil Service Staff Standards for Review.** Civil Service staff shall review all requests to disburse funds for personal services in accordance with the standards in rule 7-3. Civil Service staff shall:
  - a. Record receipt of the request and all appearances filed by interested parties. A written appearance by an interested party must be filed with Civil Service and the appointing authority within 7 calendar days after the date the request is filed with Civil Service.
  - b. Review the request for sufficiency of documentation and request any necessary additional information from the appointing authority within 7 calendar days of the receipt of the request.
  - c. Review all timely and pertinent information presented by the appointing authority and other interested parties.
  - d. Conduct interviews or conferences necessary to adequately evaluate and act upon the request.
  - e. Approve or disapprove the request after receipt of all information necessary to complete the review.
  - f. If the request is approved, specify any conditions or limitations on the approval to ensure compliance by the appointing authority.
  - g. Provide written notice of the staff decision to the appointing authority and to all other interested parties.
3. **Evaluating a Request for Combined Personal Services.** If an appointing authority files a request that includes two or more distinct personal services, the Civil Service staff shall evaluate the request pursuant to the procedure in this section.
  - a. The appointing authority shall demonstrate that the individual personal services in the request (1) have been combined for valid business reasons or (2) have some practical and reasonable nexus that warrants considering the services together in the request.
  - b. If Civil Service staff determines that one or more personal services have been improperly combined in a single request, the staff shall treat those services as separate and distinct requests and shall issue separate decisions as to those services.
  - c. When Civil Service staff considers combined personal services in a request, the request shall be approved if the staff determines either of the following:
    - (1) One of the dominant or critical personal services in the combined request meets one or more of the standards in rule 7-3.
    - (2) The combined personal services, evaluated as a whole, meet one or more of the standards in rule 7-3.
4. **Effective Date of Staff Decision.** The effective date of the staff decision shall be in accordance with rule 7-6.3

5. **Complaint Regarding Technical Decision.** Complaints regarding staff decisions must be made in accordance with rule 7-6.4.

**F. Preauthorized Personal Services.**

1. Preauthorization allows an appointing authority to make disbursements for personal services under the following conditions:

a. **\$5000 or Less per Vendor per Type of Service per Year (twelve-month period).**

- (1) The appointing authority must complete a CS-138, with appropriate approvals before the personal service is utilized.
- (2) The appointing authority must certify that each appropriate labor organization has been given written notice, if required, in accordance with provisions contained in the collective bargaining agreement. All inquiries regarding union notice requirements should be directed to the Office of the State Employer.

b. **Preauthorized to a Specific Agency.**

- (1) Civil Service approval is required on the initial request, but the preauthorization eliminates the need to submit subsequent individual requests.
- (2) The appointing authority must complete a CS-138, giving a complete description of the service for which preauthorization is requested and a rationale as to how the service meets Standard(s) A, B, and/or C.
  - (a) The appointing authority should indicate a duration of 10 years; enter \$999,999,999.00 in the "Requested Amount" field, and "Y" in the "Preauthorized" field.
  - (b) The appointing authority must certify that each appropriate labor organization has been given written notice, if required, in accordance with provisions contained in the collective bargaining agreement before submission of the CS-138 to Civil Service. All inquiries regarding union notice requirements should be directed to the Office of the State Employer.

c. **Preauthorized to all Agencies.**

- (1) Civil Service maintains on its website a list of personal services deemed to meet Standards A, B, and/or C, which are preauthorized to all agencies.
- (2) Civil Service may add to, remove, or modify the preauthorized personal services list at any time.
- (3) Deletion of specific personal services from the preauthorized list shall not affect any existing contract properly entered into by an appointing authority before the deletion. However, an appointing authority may not renew or extend a contract for personal services

deleted from the preauthorized list without first obtaining approval under rule 7-6 or 7-7.

- (4) The decision as to which personal services are preauthorized to all agencies is final and no appeal is authorized.
2. **Conditions.** Civil Service may impose conditions and requirements on the use of preauthorized personal services to ensure compliance with Civil Service Commission rules. If a service is preauthorized with conditions, it is the responsibility of the appointing authority to ensure that the conditions have been complied with in every particular before authorizing or making disbursements for the personal services.
  3. **Inquiry and Limitations.** Civil Service reserves the right to require an individual review of personal services provided under preauthorized authority when there is a question as to the applicability and validity of the use of the preauthorized service. Civil Service may require an appointing authority to justify its use of the preauthorized personal services in a specific instance. Civil Service may issue an order in writing to an appointing authority modifying, restricting or revoking the future use of the preauthorized service if Civil Service staff determines that the appointing authority has improperly used the preauthorized service.
  4. **Review of Preauthorized Disbursements.** Any person who objects to an agency's use of a preauthorized personal service may file a complaint with the State Personnel Director under rule 7-9. The director shall review the complaint and order an inquiry if there is a meritorious basis to the complaint. In addition to any other action permitted under rule 7-9, if the director determines that the preauthorized personal services do not meet the standards for preauthorization, the director may revoke the preauthorization and order that the list of preauthorized personal services be amended appropriately.
  5. **Complaint Regarding Use of Preauthorized Approval Process.** Any complaint regarding the use of the preauthorized approval process must be submitted in accordance with rule 7-9.
  6. **Appeal of Director's Decision.** Any appeal of the State Personnel Director's decision must be submitted in accordance with rule 7-9.3.

#### **G. Audit and Compliance.**

The appointing authority shall maintain sufficient documentation in support of its disbursements and shall timely report its expenditures to ensure that disbursements for personal services outside the classified service have been made in accordance with Civil Service rules and regulations. Civil Service staff will periodically conduct audits of disbursements to ensure compliance with the rules and regulations.

#### **H. Requirement to Report Contracts.**

Civil Service is required by the legislature, in 1984 PA 431, MCLA §18.1281, to file various reports related to contracts for personal services. Since Civil Service only authorizes disbursements and does not review contracts, appointing authorities

must report contract information to Civil Service for transmittal to the legislature. Also, Civil Service requires, as a condition of the use of the preauthorized personal services list, that an appointing authority report all contracts initiated or renewed under these procedures during a reporting period. For preauthorized personal services, the preauthorized personal services list establishes the reporting period and any additional reporting requirements. If an appointing authority fails to report a personal service contract, the State Personnel Director may make a finding and take action against the appointing authority, as permitted in rule 7-9.

## 5. **PROCEDURE**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	1. Submits CS-138 via ADPICS for review by Civil Service staff. Provides notice to labor organizations, in accordance with applicable collective bargaining agreements, or posts notice of intent to contract for NEREs, and provides any individual notice as required by 4.E.1.g.
Civil Service	2. Reviews all information provided by the appointing authority and any interested parties to determine if the request meets one or more of the standards in rule 7-3. 3. If adequate information has been provided, writes decision in accordance with procedure in this regulation. If information is insufficient to make a determination, requests additional information from appointing authority. 4. Notifies appointing authority and any interested parties of staff decision. 5. Informs interested parties of their rights to file a complaint regarding the technical decision and associated filing limitations.

### **CONTACT**

Questions regarding this regulation should be directed to Personal Services Review, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-241-8552 or 1-800-788-1766; or by e-mail to [MCSC-138Disbursements@michigan.gov](mailto:MCSC-138Disbursements@michigan.gov).