

# REGULATION

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<b>Issued By:</b> Executive	<b>Rule Reference:</b> Rules: 2-7 (Drug and Alcohol Testing)		<b>Replaces:</b> Reg. 2.07 (SPDOC 07-14, October 7, 2007)
<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>DRUG TESTING</b>			

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### **1. PURPOSE**

This regulation establishes standards for conducting drug testing authorized in Civil Service Commission Rule 2-7.

### **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 2-7 Drug and Alcohol Testing***

### ***2-7.1 Prohibited Activities***

*A classified employee shall not do any of the following:*

- (a) Consume alcohol or use drugs while on duty.*
- (b) Report to duty or be on duty with a prohibited level of alcohol or drugs present in the employee's bodily fluids.*
- (c) Refuse to submit to a required drug test or alcohol test.*
- (d) Interfere with any testing procedure or tamper with any test sample.*

### ***2-7.2 Testing Classified Employees***

*An appointing authority shall require an employee, as a condition of continued employment, to submit to a drug test or an alcohol test, as provided in this rule.*

*(a) Tests authorized. The following tests are authorized:*

- (1) Reasonable suspicion testing. An employee shall submit to a drug test or an alcohol test if there is reasonable suspicion that the employee has violated this rule.*
- (2) Preappointment testing. An employee not occupying a test-designated position shall submit to a drug test if the employee is selected for a test-designated position.*
- (3) Follow-up testing. An employee shall submit to an unscheduled follow-up drug test or alcohol test if, within the previous 24 months, the employee has done any of the following:*
  - (A) Voluntarily disclosed drug or alcohol problems.*
  - (B) Entered into or completed a rehabilitation program for drug or alcohol abuse.*
  - (C) Failed or refused a preappointment drug test.*
  - (D) Been disciplined for violating this rule.*
- (4) Random selection testing. A test-designated employee shall submit to a drug test and an alcohol test if the employee is selected for testing on a random selection basis.*
- (5) Post-accident testing. A test-designated employee shall submit to a drug test or an alcohol test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.*

*(b) Limitations on certain tests. An employee subject to testing under this rule may be required to submit only to a drug test, only to an alcohol test, or to both tests, subject to the following limitations.*

- (1) Preappointment testing. Preappointment testing is limited to drug testing.*

- (2) **Follow-up testing.** *The appointing authority may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug tests or alcohol tests within any 12-month period.*
- (3) **Random selection testing.** *The number of drug tests conducted in any one year on a random selection basis cannot exceed 15 percent of the number of all test-designated positions. The number of alcohol tests conducted in any one year on a random selection basis cannot exceed 15 percent of the number of all test-designated positions.*

### **2-7.3 Testing New Hires; Conditional Offer of Employment**

*Any offer of employment to a person who is not currently employed in the classified service is a conditional offer of employment. The offer of employment is conditioned upon the person submitting to and passing a preemployment drug test. A person given a conditional offer of employment is prohibited from performing any duties until the person has submitted to and passed the preemployment drug test.*

### **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 agency 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.*

### **2-7.5 Self-reporting**

- (a) **Reporting.** *An employee who voluntarily discloses to the appointing authority a problem with controlled substances or alcohol cannot be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:*
- (1) *For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this rule.*
- (2) *For preappointment testing, follow-up testing, and random selection testing, before the employee is selected to submit to a drug or alcohol test.*
- (3) *For post-accident testing, before the occurrence of any accident that results in post-accident testing.*
- (b) **Employer action.** *After receiving notice, the appointing authority shall permit the employee an immediate leave of absence to obtain medical treatment or to participate in a rehabilitation program. In addition, the appointing authority shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug test or alcohol test. The appointing authority may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.*
- (c) **Limitation.** *An employee may take advantage of subsection (a) no more often than two times while employed in the classified service. An employee making a report is*

*not excused from any subsequent drug test or alcohol test or from otherwise complying in full with this rule. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug test or alcohol test, including a follow-up test.*

#### **2-7.6 Identification of Test-designated Positions**

*Each appointing authority shall first nominate classes of positions, subclasses of positions, or individual positions to be test-designated. The state employer shall review the nominations and shall recommend to the state personnel director the positions to be test-designated positions. The director shall review the recommendations and shall designate as test-designated positions all the classifications, subclasses, or individual positions that meet the definition of a test-designated position. The designation is not limited by or to the nominations or recommendations. The appointing authority shall give written notice of designation to each test-designated employee at least 14 days before implementing the testing provisions of this rule.*

#### **2-7.7 Continuation of Existing Programs**

*Until the state personnel director issues regulations to the contrary, nothing in this rule prohibits an appointing authority from continuing to use an existing drug or alcohol testing program. Nothing in this rule or the regulations prohibits an appointing authority from implementing a drug or alcohol testing program required by federal law or approved by the commission in a collective bargaining agreement.*

#### **2-7.8 Coordination of Rule and Federal Regulations**

*This rule also applies to an employee subject to mandatory federal regulations governing drug or alcohol testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which (1) it is not possible to comply with both this rule and the federal regulation or (2) compliance with this rule is an obstacle to the accomplishment and execution of any requirement of the federal regulation.*

#### **2-7.9 Regulations**

*The state personnel director shall establish the prohibited levels of drugs and alcohol in the regulations.*

### **3. DEFINITIONS**

#### **A. Definitions as used in this Regulation**

1. **Donor** means the individual from whom a urine specimen is collected.
2. **Medical review officer (MRO)** means a licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a donor's positive test result together with the donor's medical history and any other relevant biomedical information.
3. **On duty** means being engaged in, or on-call to be engaged in, the performance of work responsibilities for the employer.

4. **Reason to believe** means a reason to believe that a particular individual may alter or substitute the urine specimen.
5. **Refusal to submit to a drug test** means any of the following:
  - a. Failing to provide an adequate urine sample without an adequate medical explanation.
  - b. Engaging in conduct that obstructs the testing process.
  - c. Refusing to be tested.
6. **Serious work accident** means an on-duty accident or incident resulting in death, or serious personal injury requiring immediate medical treatment, that arises out of any of the following:
  - a. The operation of a motor vehicle.
  - b. The discharge of a firearm.
  - c. A physical altercation.
  - d. The provision of direct health care services.
  - e. The handling of dangerous or hazardous materials.

#### 4. **STANDARDS**

##### A. **Applicability.**

1. **Executive Agencies.** This regulation applies to all executive agencies of the State of Michigan.
2. **Civil Service Rules.** This regulation applies to drug testing conducted under Civil Service rule 2-7 [Drug and Alcohol Testing]. This regulation also applies to employees subject to mandatory Federal drug testing, as provided in Civil Service rule 2-7.8.
3. **Collective Bargaining.** This regulation does **not** apply to drug testing conducted under the provisions of a collective bargaining agreement approved by the Civil Service Commission, unless otherwise provided in the agreement.
4. **Deviations.** Appointing authorities may not deviate from the provisions of this regulation without the written approval of the State Personnel Director. In requesting approval for a deviation, an appointing authority must petition the director in writing and describe the specific provision or provisions for which a deviation is sought and the rationale for the proposed deviation. The director may approve the request upon a finding of good cause.
5. **Preappointment Drug Testing of Current Employees.** Under Civil Service rules 2-7.2(a)(2) and 2-7.4(b), a current employee who is not in a test-designated position and is selected for a test-designated position must pass a preappointment drug test before starting in the test-designated position. If there is no history of actual or suspected drug or alcohol problems during the employee's tenure as a state employee, an appointing authority may rely on the following to satisfy the preappointment drug testing requirement:

- a. **Use of prior drug test.** The preappointment testing requirement may be satisfied if the employee passed another state drug test (e.g., preemployment or random drug test) any time during the previous five-year period of continuous employment with the state.
- b. **Temporary assignment to test-designated position.** If an employee is assigned to perform temporarily the duties of a test-designated position and has not passed a state drug test as provided in 5.a., the employee shall submit to a drug test no later than 11 work days after the employee begins performing the test-designated duties. In addition, the employee shall be placed in the pool for random testing while the employee is temporarily performing duties of a test-designated position.

## B. Drugs Included.

1. **Drugs Included.** Civil Service rule 9-1 defines "drugs" as those included in Schedule 1 or 2 of controlled substances at MCL 333.7201, *et seq.* Hundreds of drugs are covered under Schedules 1 and 2, but it is not feasible to test routinely for all of them. When a drug test is required, an appointing authority shall require testing for marijuana, cocaine, opiates, amphetamines, and phencyclidine. When conducting reasonable suspicion or post-accident drug testing, an agency may require testing for any drug listed in Schedule 1 or 2 of the MCSA. Before an agency requires testing for other drugs, however, it must obtain approval from the State Personnel Director. An agency requesting approval shall submit to the State Personnel Director the agency's proposed initial test methods, testing levels, and proposed performance test program.
2. **Other Laws.** This regulation is not intended to limit any agency that is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

## C. Testing Protocols.

1. **Drug Testing.** The state drug testing program will operate under the standards and protocols established under the Mandatory Guidelines for Federal Workplace Drug Testing promulgated by the U.S. Department of Health and Human Services, as amended, except as otherwise provided in Civil Service rules or regulations. This shall include procedures for specimen collection, laboratory analysis, and reporting and review of results.
2. **Disclosure of Drug Testing Information about Individual Employees.**
  - a. Appointing authorities shall maintain records in a secure manner to prevent the disclosure of information to unauthorized persons.
  - b. Except as required by law or expressly authorized or required in this section, no appointing authority shall release employee information that is contained in the records required to be maintained by rule 2-7 or this regulation.
  - c. An employee subject to testing is entitled, upon written request, to obtain copies of any records pertaining to the employee's drug tests. The appointing authority shall promptly provide records requested by the

employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

- d. When requested by the State Personnel Director, each appointing authority shall make available copies of all results for appointing authority drug testing conducted under this regulation and any other information pertaining to the agency's drug prevention program. The information shall include name-specific drug test results, records, and reports.
- e. An appointing authority shall make records available to a subsequent appointing authority upon receipt of a written request from an employee. Disclosure by the subsequent appointing authority is permitted only as expressly authorized by the terms of the employee's written request.
- f. An appointing authority may disclose information pertaining to an employee that is required to be maintained under this regulation to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under this regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
- g. An appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.

#### **D. Prohibited Levels of Drugs and Penalties.**

1. **Prohibited Levels of Drugs.** A positive test result reported by the MRO shall constitute a violation of Civil Service rule 2-7.1(b) and shall constitute just cause for the appointing authority to discipline the donor and for Civil Service to disqualify the donor from future state employment.
2. **Discipline.** The appointing authority shall specify, in writing, the penalty or penalties that may be imposed for a violation of Civil Service rule 2-7. However, an appointing authority shall immediately remove a test-designated employee from the employee's duties if the employee tests positive for drugs or otherwise violates rule 2-7.1. In addition, Civil Service shall immediately disqualify the donor from future state employment as provided in Civil Service rule 2-7.4.

#### **E. Education and Training.**

1. **Required Employee Education and Training.** All employees subject to Civil Service rule 2-7 shall be provided with educational materials that explain the state's policies and procedures with respect to meeting these requirements. This information is to be distributed to each covered employee before the start of testing under rule 2-7. The required content of this material must include:



- a. The identity of the person designated by the employer to answer questions about the educational materials.
  - b. Which employees are subject to this regulation.
  - c. Sufficient information to explain what the term “test-designated position” means.
  - d. Specific information to explain what is prohibited by this regulation.
  - e. The circumstances under which employees will be tested for controlled substances.
  - f. The penalties or other consequences for an employee found to have violated provisions of Civil Service rule 2-7.
  - g. The procedures used to test employees for controlled substances and the procedures in place to protect employees and ensure the integrity of the testing process, safeguard the validity of test results, and ensure that those test results are attributed to the correct employee.
  - h. An explanation of the requirement that employees must submit to testing in accordance with this regulation.
    - i. An explanation of what constitutes a refusal to submit and what penalties may be incurred for failure to submit to testing.
    - j. Information concerning the effects of controlled substance use on an employee’s health, work, and personal life; signs and symptoms of a controlled substance problem; and methods for an employee to obtain assistance if a substance abuse problem is suspected.
2. **Required Supervisory Training.** In addition to the information provided to covered employees, supervisors shall be provided with training on controlled substance use to enable them to determine when an employee should be required to submit to a controlled substance reasonable suspicion test. Such training shall include the physical, behavioral, speech, and performance indicators of probable use of controlled substances.

## **CONTACT**

Questions regarding this regulation should be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; or by telephone at (517) 373-3024.