

Michigan Civil Service Commission

Regulation 2.08

Subject: Alcohol Testing		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.08 (SPDOC 10-05, April 4, 2010)

1. Purpose

This regulation establishes standards to conduct alcohol testing authorized in rule 2-7.

2. CSC Rule References

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.*

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(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.*

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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.*

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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

B. Definitions in This Regulation.

1. **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
2. **Alcohol concentration** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.
3. **Confirmatory test** means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.
4. **On duty** means engaged in or on-call to be engaged in work responsibilities for the employer.
5. **Refusal to submit** means any of the following:
 - a. Failing to provide an adequate 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 arising out of: operation of a motor vehicle; discharge of a firearm; a physical altercation; provision of direct health care services; or handling 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 alcohol testing under rule 2-7 and to employees subject to mandatory federal alcohol testing, as provided in rule 2-7.8.
3. **Collective Bargaining.** This regulation does not apply to alcohol testing conducted under a collective bargaining agreement approved by the commission, unless otherwise provided in the agreement.
4. **Deviations.** An appointing authority cannot deviate from this regulation without the director's written approval. In requesting approval for a deviation, an appointing

authority must petition the director in writing and describe the specific provisions where a deviation is sought and the rationale. The director may approve a request upon a finding of good cause.

B. Testing Procedures.

The state alcohol testing program operates under the standards and protocols established under the Procedures for Transportation Workplace Drug and Alcohol Testing promulgated by the U.S. Department of Transportation, except as otherwise provided in the rules or regulations.

C. Prohibited Levels of Alcohol and Penalties.

1. **Prohibited Levels.** It is a violation of rule 2-7.1(b) to report to or be on duty with a breath alcohol concentration equal to or greater than 0.02. A confirmatory-test result equal to or greater than 0.02 constitutes just cause to discipline an employee. Refusal to submit to an alcohol test shall also constitute a violation of rule 2-7.1(b).
2. **Discipline.** The appointing authority shall specify, in writing, the penalties that may be imposed for violating rule 2-7. An appointing authority shall immediately remove a test-designated employee from the employee's duties if a test reveals a prohibited level of alcohol or the employee otherwise violates rule 2-7.1.

D. Disclosure of Alcohol Testing Information.

1. Appointing authorities shall maintain records in a secure manner to prevent disclosure of information to unauthorized persons.
2. Except as required by law or expressly authorized or required in this section, an appointing authority shall not release employee information contained in records required to be maintained by rule 2-7 or this regulation.
3. An employee subject to testing is entitled, upon written request, to copies of any records pertaining to the employee's use of alcohol, including any records pertaining to alcohol tests. The appointing authority shall promptly provide requested records. Access cannot be contingent upon payment for records other than those specifically requested.
4. When requested by the director, each appointing authority shall make available copies of all results for alcohol testing under this regulation and any other information pertaining to the agency's alcohol-misuse-prevention program, including name-specific alcohol test results, records, and reports.
5. 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.

6. An appointing authority may disclose information required to be maintained under this regulation on an employee to the decisionmaker in a lawsuit, grievance, or proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
7. An appointing authority shall release information on an employee's records as directed by the specific, written consent of the employee authorizing release to an identified person. Release is permitted only in accordance with the terms of the employee's consent.

E. Education and Training.

1. **Employees.** All employees subject to rule 2-7 must be provided at hire with educational materials explaining the state's testing policies. The materials must include:
 - a. The identity of the person designated to answer questions on the materials.
 - b. Which employees are subject to this regulation, including which employees are in test-designated positions.
 - c. Explanation of the term test-designated position.
 - d. Specific information explaining what is prohibited by this regulation.
 - e. The circumstances when employees will be tested for alcohol.
 - f. The penalties for an employee found to have violated rule 2-7.
 - g. The procedures to test employees for alcohol, protect employees, ensure the integrity of the testing process, safeguard the validity of test results, and ensure that test results are attributed to the correct employee.
 - h. Explanation of the requirement that employees submit to testing under rule 2-7.
 - i. Explanation of what constitutes a refusal to submit and penalties for failure to submit to testing.
 - j. Information on the effects of alcohol use on an employee's health, work, and personal life; signs and symptoms of an alcohol-abuse problem; and how to obtain assistance if an alcohol-abuse problem is suspected.
2. **Supervisors.** In addition to information provided to covered employees, supervisors must receive training on alcohol abuse to determine when an employee should be required to submit to reasonable-suspicion testing. The training must include the physical, behavioral, speech, and performance indicators of probable use of alcohol.

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-284-0093; or to MCSC-OGC@mi.gov.