

# Michigan Civil Service Commission

## Regulation 2.07

<b>Subject:</b> <b>Drug and Alcohol Testing</b>		
<b>SPDOC No.:</b> <u>22-1523-06</u>	<b>Effective Date:</b> <del>January 1, 2023</del>	<b>Replaces:</b> Reg. 2.07 (SPDOC <del>221-1504</del> , <u>January 1, 2023</u> <del>September 5, 2021</del> )

### 1. Purpose

This regulation establishes standards to conduct drug and 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.*
- (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) **Test-designated positions.** An employee selected for a test-designated position cannot serve 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 ineligible for appointment to any test-designated positions for three 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.** *If a person conditionally offered employment fails or does not complete a preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority shall rescind the conditional offer in writing. The rescission must include notice of the complaint procedure and the 14-day time limit. The person is disqualified for appointment to the classified service for three years.*

**(c) Rescission of marijuana sanctions.** *A person with an active three-year sanction based on a positive result for marijuana from a pre-employment drug test for a non-test-designated position may request the sanction's prospective rescission as provided in the regulations.*

\* \* \*

### **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. CSC Rule Definition.

1. **Drug** means a controlled substance or a controlled substance analogue listed in schedule 1 or schedule 2 of part 72 of the Michigan public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7201, et seq., of the Michigan Compiled Laws, as may be amended from time to time.

#### 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. **Donor** means the individual from whom a urine sample is collected.
5. **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 appropriate medical training to interpret and evaluate a positive test result, the donor's medical history, and any other relevant biomedical information.
6. **On duty** means engaged in or on-call to be engaged in work responsibilities for the employer.
7. **Refusal to submit** means any of the following:
  - a. Failing to provide an adequate sample without a sufficient medical explanation.
  - b. Engaging in conduct that obstructs the testing process.
  - c. Refusing to be tested.
8. **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. **Agencies.** This regulation applies to all executive agencies of the State of Michigan.

2. **Rules.** This regulation applies to drug and alcohol testing under rule 2-7 and to employees subject to mandatory federal drug and alcohol testing, as provided in rule 2-7.8.
3. **Collective bargaining.** This regulation does not apply to drug and 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.
5. **Preappointment drug testing of current employees.** Under rules 2-7.2(a)(2) and 2-7.4(b), a current employee who is not in a test-designated position must pass a preappointment drug test before starting in a new 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 testing requirement:
  - a. **Prior drug test.** The preappointment testing requirement may be satisfied if the employee passed another state drug test during the previous five years while continuously employed by the state.
  - b. **Temporary assignment.** If an employee is assigned to temporarily perform the duties of a test-designated position and has not passed a state drug test during the previous five-year period of continuous employment, the employee shall submit to a drug test no later than 11 work days after beginning the test-designated duties. The employee is also placed in the pool for random testing while temporarily performing the duties.

## B. Testing Procedures.

1. **Drug testing.**
  - a. **Guidelines.** Drug testing is conducted consistent with standards in the Mandatory Guidelines for Federal Workplace Drug Testing promulgated by the U.S. Department of Health and Human Services, except as otherwise provided in the rules or regulations. This includes procedures for sample collection, laboratory analysis, and reporting and reviewing results.
  - b. **Drugs included.** 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, [except that an appointing authority shall not require testing for marijuana for a pre-employment drug test of a new hire to a position that is not test-designated](#). ~~Before~~ If an agency requires testing for other drugs, it must [first](#) obtain [written](#) approval from the director. A request must include the agency's proposed initial test methods, testing levels, and performance test program. When conducting reasonable-suspicion or post-accident testing, an agency may require testing for any drug listed in schedule 1 or 2.

2. **Alcohol testing.** Alcohol testing is conducted consistent with 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 and Penalties.

1. **Drugs.** A positive result for drugs reported by an MRO violates rule 2-7.1(b) and constitutes just cause to discipline the donor and for civil service to disqualify the donor from future state employment. Failure or refusal to submit to a required drug test also violates rule 2-7.1(c).
2. **Alcohol.** It violates 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(c).
3. **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 drug or alcohol or if the employee otherwise violates rule 2-7.1. In addition, Civil Service staff shall immediately disqualify the donor from future state employment as provided in rule 2-7.4 for a failed drug test.

### D. Disclosure of Drug and Alcohol Testing Information.

1. Appointing authorities shall maintain records securely 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 in records required to be maintained on drug or alcohol tests.
3. An employee subject to testing is entitled, upon written request, to copies of any records on the employee's use of drugs or alcohol, including any records on drug or 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 testing under this regulation and any other information on the agency's alcohol-misuse or substance-abuse-prevention programs, including name-specific 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 employee's written request.
  6. An appointing authority may disclose information required to be maintained on drug or alcohol tests to the tested employee or the decisionmaker in a lawsuit, grievance, or proceeding initiated by or for the individual, and arising from the results of testing under this regulation or from the appointing authority's determination that the employee engaged in prohibited conduct. This includes a worker's compensation, unemployment compensation, or other proceeding over a benefit sought by the employee.
  7. An appointing authority shall release information on an employee's records as directed by the employee's specific, written consent authorizing release to an identified person. Release is permitted only in accordance with the terms of the 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 that 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 drugs and alcohol.
  - f. The penalties for an employee found to have violated rule 2-7.
  - g. The procedures to test employees for drugs and 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 drug and alcohol use on an employee's health, work, and personal life; signs and symptoms of a drug- or an alcohol-abuse problem; and how to obtain assistance if a problem is suspected.
2. **Supervisors.** In addition to information provided to covered employees, supervisors must receive training on drug and 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 drug and alcohol use.

## **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; 517-284-0093; or [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).