



State Personnel Board Rules

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478-1-.21 Drug and Alcohol Free Workplace Program.

(1) **Introduction:**

The State prohibits the manufacture, distribution, dispensation, possession, or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other controlled substances during an employee's working hours or while on State premises or worksites. Employees violating the Rule are subject to disciplinary action, up to and including termination of employment.

- (a) No one who is under the influence of illegal drugs, inhalants, or alcohol may enter, work, or remain on the State's work premises, operate the State's vehicles (whether owned or leased), or represent the State in any capacity. The unauthorized use of legally obtained drugs (including drugs prescribed by a health care professional) that may adversely affect job performance or safety is also prohibited. An employee using legally obtained drugs must notify his/her supervisor and obtain prior authorization before operating a State vehicle, or reporting to work if use of the drug(s) could impair the employee's ability to perform his/her job safely.
- (b) All employees must be informed of the State's Drug and Alcohol Free Workplace Program and related policies and procedures. An employee who refuses to be tested as defined by and required under this Rule, fails to appear for a scheduled test, or disrupts the testing process will be terminated. A P.O.S.T. certified employee whose test result is confirmed positive for alcohol or verified positive by the MRO for illegal drugs will be terminated. Other employees whose alcohol test result is confirmed positive or whose drug test is verified positive by the MRO will be subject to disciplinary action, up to and including termination.
- (c) For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-02 (Terms and Definitions):
 - 1. "Adulterated Sample" is a specimen that contains a substance that is not expected to be present in human urine or a substance that is expected to be present but is at a concentration so high that it is not consistent with human urine.
 - 2. "Alcohol" is the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.
 - 3. "Alcohol Concentration" or "Alcohol Content" is the alcohol in a volume of breath expressed in terms of grams of alcohol per two hundred and ten (210) liters of breath as indicated by an alcohol test.
 - 4. "Alcohol Confirmation Test" is a breath test using an evidential breath testing device (EBT) capable of printing results and approved by the National Highway



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Traffic Safety Administration (NHTSA) and placed on its “Conforming Products List of Evidential Breath Measurement Devices” used to determine whether an individual may have a prohibited concentration of alcohol in a breath specimen. Such testing must be performed by a certified Breath Alcohol Technician. It can be a second test following an alcohol screening test which indicates an alcohol concentration of 0.02 percent or greater.

5. “Alcohol Screening Device” (ASD) is a breath or saliva device other than an EBT that is approved by NHTSA and placed on a Conforming Products list for such devices.
6. “Alcohol Screening Test” is an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
7. “Breath Alcohol Technician” (BAT) is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath-testing device in accordance with the regulations of the United States Department of Transportation.
8. “Chain of Custody” is the procedure used to document the handling of the urine specimen from the time the individual gives the specimen to the collector until the specimen is destroyed.
9. “Collector” is a person who instructs and assists individuals, who receives and makes an initial inspection of the specimen provided by those individuals, who initiates and completes the Custody and Control Form (CCF) and who is trained according to either United States Department of Transportation standards for DOT regulated donors or Health and Human Services standards for non-DOT-regulated donors.
10. “Donor” is an individual who has provided a urine sample in the course of completing a drug test.
11. “Drug Testing” or “Drug Test” is the collection and testing of urine administered in a manner equivalent to that required by the regulations of the State of Georgia (Official Code of Georgia 34-9-415) and the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations, 53 Fed. Reg.11979, *et seq.*, as amended). This definition is applicable to all types of drug testing of applicants and employees in P.O.S.T. certified and other non-regulated/non-safety-sensitive positions.
12. “Drug Testing” or “Drug Test” is the collection and testing of urine administered in a manner equivalent to that required by the rules and regulations of the United States Department of Transportation (49 CFR Part 40 and Part 382, 14 CFR Part 121 Appendices I & J, 33 CFR Part 95, and 49 CFR Part 655). This definition is



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applicable to *all types of drug testing of applicants and employees in safety sensitive positions.*

13. "High-Risk Work" refers to those duties where inattention to duty or errors in judgment by the incumbent while on duty will have the potential for significant risk of harm to the individual, other individuals, or the general public.
14. "Illegal Drug" includes but is not limited to marijuana/cannabinoids (THC), cocaine, amphetamines/meth-amphetamines, opiates or phencyclidine (PCP), or any controlled substance as defined in O.C.G.A. 16-13-21. The term illegal drug does not include any drug used pursuant to and in accordance with a valid prescription or when used as otherwise authorized by state or federal law.
15. "Individual" is an applicant or employee as defined elsewhere in this Rule.
16. "Medical Review Officer" is a properly licensed physician who receives and reviews the results of drug tests and evaluates those results together with medical history or any other relevant biomedical information to confirm positive results.
17. "Reasonable Suspicion" for non-DOT regulated testing refers to the employers' judgment that an employee has violated the State's Alcohol and Other Drug Free Workplace Policy. This judgment should be made as a result of an employee's behavior, appearance, speech, body odor, and/or job performance that is observed by a supervisor/manager or reported by a reliable individual and verified. The decision to test must be based on specific, timely, and describable observations of physical, behavioral, or performance indicators. These indicators include but are not limited to:
 - (i) An on-the-job incident, such as a medical emergency, that is likely to be attributable to illegal drug use by an employee;
 - (ii) Observation of behavior exhibited by an employee that might render the employee unable to perform his/her job or that might pose a threat to the safety or health of the employee, fellow employees, or the general public;
 - (iii) Verifiable information that an employee may be illegally using drugs or under the influence of illegal drugs or alcohol;
 - (iv) Physical on-the-job evidence of drug use by an employee;
 - (v) Documented deterioration in an employee's job performance that is likely to be attributable to drug use by the employee;
 - (vi) The results of other scientific test(s) that may tend to indicate possible use of drugs or alcohol; or



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- (vii) Any other *specific, timely, and describable* action that would give an Appointing Authority reason to suspect that an employee may have broken a substance abuse prohibition.
18. “Reasonable Suspicion” for DOT regulated testing refers to the employers’ determination that reasonable suspicion exists that a safety-sensitive employee may have broken a substance abuse prohibition. The decision to test must be based on specific, timely, and describable observations of appearance, behavior, speech, and/or body odor. One or more of the referring supervisors/managers must be trained in the detection of the misuse of alcohol and the use of controlled substances.
19. “Safety-Sensitive Position” is any position whose incumbent is required to undergo drug and alcohol testing by regulations of the United States Department of Transportation (49 CFR Part 382.103, 14 CFR Part 121 Appendices I & J, 33 CFR Part 95, and/or 49 CFR Part 655). In general, such positions are those where the duties require possession of a valid commercial driver's license, but also includes other positions subject to drug and alcohol testing as required by the FAA, FTA, or Coast Guard, or and other positions subject to drug and alcohol testing as required by federal law or regulation.
20. “Screening” is the collection and testing of bodily substances administered according to professionally valid procedures in accordance with accepted medical and legal standards.
21. “Split Specimen” is part of the DOT regulated urine specimen that is sent to the first laboratory and retained unopened, and which is transported to a second laboratory in the event that the individual requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.
22. “State Employer” is any state agency, department, commission, bureau, board, college, university, institution, or authority of any branch of state government.
23. “Substance Abuse Professional” is a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional (EAP), addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), or marriage and family counselor. This professional must: be knowledgeable of and experienced in the diagnosis and treatment of alcohol and controlled substances related disorders; be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties per 49 CFR 40 for the DOT agency regulations applicable to the employers for whom they evaluate employees; be knowledgeable of the DOT SAP Guidelines; receive qualification training on seven key, defined areas by a qualified trainer; satisfactorily complete an examination administered by a nationally-recognized



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professional or training organization; and satisfactorily complete at least 12 professional development hours of continuing education every three years.

24. "Substituted Sample" is a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

(2) General Provisions:

(a) Types of testing:

Applicants and employees in "safety-sensitive" positions (federally regulated) and positions that include "high-risk work" (POST & agency identified positions), are subject to Pre-employment and Random testing. All individuals performing work for a state employer are subject to Reasonable Suspicion, Post-accident, Return-to-Duty, and Follow-up testing for alcohol and other drugs. Testing provisions for individuals in "safety-sensitive" positions are subject to the US Department of Transportation (DOT) alcohol and other drug testing regulations and are in Section 478-1-.21(8).

1. Pre-employment (post-job offer):

An individual, who has been offered a position that has been determined by the appointing authority to include "high-risk" work, and applicants for DOT regulated positions, are subject to pre-employment drug testing.

2. Random:

Random drug tests are conducted on an unannounced basis on randomly selected employees from pools of employees in those "high-risk" positions requiring P.O.S.T. certification, other positions designated as "high-risk", and those covered by US DOT regulations. Random alcohol tests are conducted on DOT regulated positions only. The annual percentage of covered employees to be tested varies by pool. Random selections in all pools will be made between ten and twelve times a year.

3. Reasonable Suspicion:

Reasonable suspicion tests are conducted when a supervisor or manager observes behavior, appearance, speech or performance that is characteristic of alcohol or other drug misuse. The observations leading to referral for testing must be specific, timely, and describable. All individuals performing work for a state employer are subject to Reasonable Suspicion testing. Referral for a DOT regulated Reasonable Suspicion test can only be made by a trained supervisor/manager.



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4. Post-Accident:

- (i) Non-DOT regulated accidents. Any employee who causes or contributes to,
 - (1) a lost time injury that requires medical attention away from the worksite, or
 - (2) an accident that results in more than \$2,000 in damage to State property is subject to Post Accident testing.
- (ii) DOT regulated accidents. Employees in DOT regulated positions are also subject to DOT Post accident testing. Each Operating Administration of the US DOT has a specific and different definition of "Accident" that takes into account the type of safety-sensitive functions performed. See Section 478-1-.21(8)(c)(3) for FMCSA, FAA, FTA and Coast Guard definitions.

5. Return to Duty:

Any individual who:

- (1) will be allowed to return to work following a confirmed positive alcohol or a verified positive drug test, or
- (2) will return to work after self-disclosing a substance abuse problem, must successfully complete the alcohol and/or drug testing process and obtain a negative result before returning to the job.

6. Follow-up:

Any individual who returns to work following a positive test result or self-disclosure of a substance abuse problem is subject to unannounced alcohol and other drug testing for up to five years.

(b) Other Substance Abuse Testing Programs:

The provisions of this rule should not be construed to prevent an Appointing Authority from establishing any other drug or alcohol testing program, as authorized by law.

(c) Administration:

Drug and alcohol testing should be conducted in accordance with applicable federal and state laws and regulations, and in accordance with procedures established by the Commissioner. The Commissioner will enter into whatever contracts are necessary to provide for testing and verification services. These testing programs



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should give due consideration to security of sample collection, chain of custody requirements, accuracy of testing, and confidentiality of results.

(d) **Expense of Substance Abuse Testing:**

The expense of substance abuse testing is the responsibility of the agency employing the individual. However, if a donor requests that a split sample of a drug test be submitted for separate analysis, or that the remaining portion of the original specimen be reanalyzed, the Appointing Authority may seek payment or reimbursement of all or part of the cost of the split specimen/reanalysis from the donor, as long as the Appointing Authority has a written policy which specifies the donor's responsibility to pay for the split sample/reanalysis. However, the Appointing Authority cannot make payment, reimbursement, or ability to pay a condition for performing the split sample/reanalysis testing. The Appointing Authority is responsible for ensuring that the split sample/reanalysis testing is performed in a timely manner.

(e) **Duty Time:**

An employee selected for or directed to substance abuse testing will be considered as being on duty for all time necessary to undergo the testing process, including any time that may be required for transportation to and from the sample collection facility.

(f) **Reporting Drug Test Results:**

The Department of Administrative Services will receive all drug test results from the Medical Review Officer and will make available or transmit them to the appropriate Agency or Appointing Authority which has contracted with the Department of Administrative Services for drug testing services.

(g) Situations not expressly covered in this rule will be addressed in a manner comparable to those in US DOT regulations.

(3) **Reporting for Testing:**

(a) **Drug Testing:**

Individuals who have been directed to report for drug testing must present themselves to a designated sample collection facility or an approved location within the Appointing Authority's facilities. The Appointing Authority must specify a date and time by which each individual must report for testing. The date and time should be as soon as possible, but not later than two business days following the date the individual receives notification to report.



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(b) Alcohol Testing:

The Appointing Authority must specify a date, time and location for an employee to report for alcohol testing. The employee must not be notified more than four hours prior to the time of the testing. *For US DOT regulated employees*, the date and time must be during a workday on which the employee is scheduled to perform safety-sensitive duties. The test should never be performed more than two hours before or two hours after the performance of the safety-sensitive duties.

(4) **Refusal or Failure to Appear for Substance Abuse Testing:**

- (a) An applicant who declines an offer of employment for reasons unrelated to drug testing will not be deemed to have refused testing;
- (b) An individual who expressly refuses to undergo drug testing or engages in conduct that clearly obstructs the testing process will be deemed to have expressly refused testing;
- (c) An individual who fails to appear for substance abuse testing after proper notification by the stated “report by” time, or who refuses to remain readily available for testing will be deemed to have expressly refused testing;
- (d) An individual who fails to provide adequate urine for drug testing without a valid medical reason will be deemed to have expressly refused testing;
- (e) An individual who fails to provide adequate breath or saliva for alcohol testing without a valid medical explanation will be deemed to have expressly refused testing;
- (f) If the testing laboratory and the Medical Review Officer determine that the urine sample of a donor is an adulterated sample, the donor will be deemed to have expressly refused testing; or
- (g) If the testing laboratory and the Medical Review Officer determine that the urine sample of a donor is a substituted sample, the donor will be deemed to have expressly refused testing.

(5) **Observed Samples:**

An observed sample may be conducted by a representative of the collection facility or a subcontractor of the same sex as the donor.

(a) Criteria for Observed Sample:

When a collection site representative determines that a sample temperature is outside the acceptable range of 90 through 100 degrees Fahrenheit, the sample has an unusual appearance, or unusual behavior or appearance of the donor is observed



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during the collection steps, the collection may be conducted as an observed sample. A sample will not be collected as an observed sample unless the necessity for it has been confirmed by a supervisor of the site representative or other appropriate collection site personnel. Any other circumstances require the approval of the Appointing Authority.

- (b) An Appointing Authority may direct a sample to be collected as an observed sample if the Appointing Authority has reason to believe that the donor may attempt to alter or falsify the sample, or as otherwise provided in this Rule.
- (c) Return-to-Duty and Follow-up tests will be observed.

(6) **Pre-Employment Drug Testing:**

- (a) Determination of Positions Subject to Pre-Employment Drug Testing:

Each Appointing Authority has conducted an analysis of all jobs utilized in the Appointing Authority's Agency to determine those positions whose duties and responsibilities warrant requiring applicants for those positions to undergo pre-employment drug testing. Any new positions established in an Agency must undergo a similar analysis not later than six weeks after the position is established.

- (b) Each Appointing Authority must consult with the Commissioner before making final determinations regarding positions subject to pre-employment drug testing. The identification of positions designated as subject to pre-employment drug testing and accompanying documentation and analysis must be reported to the Department of Administrative Services in the form and manner prescribed by the Commissioner.
- (c) Individuals who are temporary, part-time, students, volunteers, etc. in safety-sensitive and high-risk positions are subject to testing.
- (d) Applicability:

For purposes of this section, "applicant" means:

1. An individual who has been offered initial employment with an agency in a position subject to pre-employment drug testing or who has commenced initial employment with an Agency but has not submitted to an established test for illegal drugs;
2. A current agency employee who is an incumbent of a position not subject to pre-employment drug testing who has been offered employment in a position subject to pre-employment testing; or
3. A current agency employee who has been offered employment in a different state agency in a position subject to pre-employment drug testing.



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4. Applicants are required to complete a pre-employment drug test for the presence of illegal drugs prior to commencing employment or within ten days of commencing employment.
5. Applicants whose results of drug testing do not indicate illegal drug usage may be considered as eligible for employment.

(e) Disqualification from State Employment:

Any applicant, as defined above, whose drug test results are reported as positive by the Medical Review Officer, who expressly refuses a pre-employment drug test, or who fails to successfully complete a test will be disqualified from holding any position with a State employer for a period of two (2) years. The Department of Administrative Services should notify the applicant, in writing, that he/she has been deemed to have used an illegal drug and is therefore disqualified from state employment for a period of two years from the date of notification.

(f) Separation from State Employment:

Any applicant, as defined above, whose drug test results are reported as positive and who commenced employment prior to being required to report for drug testing, or who commenced employment before the results of drug testing were received by the Appointing Authority, should be immediately separated from employment. The Appointing Authority will notify the applicant of the separation and the reasons for it, but the separation cannot be appealed except as provided in other provisions of these Rules.

(g) Consequences to Current Employees:

If employment in the new position has not commenced, the Department of Administrative Services will notify the current Appointing Authority of an applicant under sections 2. or 3., above, whose drug test results are reported as positive by the Medical Review Officer. The current Appointing Authority may take such action as it deems appropriate.

(h) Notice to the Department of Administrative Services:

Each Agency must notify the Department of Administrative Services of any applicant who has refused or failed to appear for drug testing. The notice should include the name, address, and social security number of the applicant, the date of refusal or failure to appear, and a brief statement of the circumstances.



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(i) Final Determination:

1. The decision of the Medical Review Officer regarding the verification of a positive drug test result will be final. No appeal or review of the test results by the applicant is permitted.
2. An applicant may request a review of the two (2) year disqualification in the case of a "Refusal." The request must be in writing. The Commissioner or Commissioner's designee will consider all requests for review, and may request additional information necessary to reach a decision. The decision of the Commissioner will be final.

(7) Random Drug Testing of Employees in High-Risk Positions:

(a) Determination of High-Risk Positions:

1. Each Appointing Authority, in consultation with the Commissioner, must determine those positions and groups of positions which require certification under the Georgia Peace Officers Standards and Training Act (P.O.S.T.) and whose incumbents regularly perform high-risk work.
2. Each Appointing Authority, in consultation with the Commissioner, must determine those non-P.O.S.T certified positions and groups of positions whose incumbents regularly perform high-risk work. Examples of these positions may include, but are not limited to: medical personnel, non-DOT regulated drivers, in-home care providers, heavy equipment operators, and electricians.
3. Positions will not be designated as high-risk if the incumbents do not regularly perform high-risk work, regardless of the fact that others in the same classification do regularly perform high-risk work.
4. Individuals who are temporary, part-time, students, volunteers, etc. in safety-sensitive and high-risk positions are subject to testing.
5. Any change in duties assigned to a position that would affect the designation or non-designation of engaging in high-risk work must be reported to the Commissioner within thirty (30) calendar days of the change.

(b) Applicability:

All employees required to be P.O.S.T. certified (including those working under a contract to provide personnel services such as medical, security, or transportation services) and who are engaged in high-risk work are subject to random drug testing for evidence of the illegal use of drugs. Employees in other high-risk positions, as designated by the Appointing Authority, are subject to random drug testing for evidence of the illegal use of drugs. Prior to being placed in a position subject to



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testing, an employee or applicant should be notified of the requirement for testing and of the consequences of a positive result or of refusal or failure to appear for testing.

(c) Selection Procedures:

1. Subject Pools:

The Commissioner will establish pools composed of all positions designated as being high-risk by the appointing authorities. One pool will include all P.O.S.T. certified positions; the other(s) will include all those designated as high-risk that do not require P.O.S.T. certification.

2. Random Sample:

Once each month, the Commissioner will select, at random, a sample of positions in the pool.

(d) Notice of Selection:

The Commissioner will notify each Appointing Authority of positions, if any, that have been selected from the pool. The notice will contain the effective date to be used for determining the incumbent(s) to be screened and when screening will begin.

(e) Testing of Incumbents:

The incumbent of the selected position as of the effective date specified in the Notice of Selection will be the employee subject to testing unless that individual is no longer employed in the agency. Incumbents selected for random testing will be notified of the selection by the Appointing Authority.

(f) Multiple Incumbents:

Should a selected position have more than one incumbent as of the specified effective date, all incumbents will be subject to testing.

(g) Incumbents on Leave:

If the incumbent of a selected position was on any form of paid or unpaid leave as of the effective date specified in the Notice of Selection and the incumbent returns to duty within 30 calendar days of the effective date, the Appointing Authority should specify a date and time by which the employee must report for testing. The date and time must not be more than two business days following the date the employee returns to duty.



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1. Vacant Positions:

If a position was vacant as of the effective date specified in the Notice of Selection, no incumbent testing for that position will take place.

(8) Drug and Alcohol Testing of Safety-Sensitive Employees:

(a) Determination of Safety-Sensitive Positions:

Each Appointing Authority must designate as “safety-sensitive” those positions whose incumbents are regulated by one of US DOT’s Operating Administrations. This includes: those who perform safety-sensitive functions as defined by the FMCSA in 49 CFR Part 382; those who perform safety-sensitive functions as defined by the FAA in 14 CFR Part 121 Appendix I; those defined in Chapter 33 of Title 46 United States Code and those who perform safety-sensitive functions as defined by the FTA in 49 CFR Part 655. The Appointing Authority will also designate as “safety-sensitive” those positions subject to drug and alcohol testing by federal law or regulation.

1. Any change in duties assigned to a position that would affect the designation or non-designation of engaging in safety-sensitive duties must be reported to the Commissioner within 30 days of the change.

(b) Applicability:

1. “Employee” or “applicant,” for purposes of this section, means any individual who is employed or who has been offered employment in a safety-sensitive position.
2. All safety-sensitive employees and applicants are subject to drug and alcohol testing for evidence of the illegal use of drugs and/or misuse of alcohol. Prior to being placed in a position subject to testing, an employee or applicant should be notified of the requirement for testing and of the consequences of a positive result or of refusal or failure to appear for testing.
3. Safety-sensitive employees and applicants will be directed to present themselves to a designated, approved collection facility and will not be subject to on-site testing.
4. All facilities and procedures used for drug and alcohol testing of safety-sensitive employees and applicants must meet all requirements established by the Department of Transportation (49 C.F.R. Part 40, Subpart B).



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(c) Types of Testing:

1. Pre-Employment:

Applicants for safety-sensitive positions and employees who have not previously performed safety-sensitive duties are required to successfully complete drug testing prior to performing safety sensitive duties.

2. Random Testing:

All safety-sensitive employees are subject to random drug testing. Random alcohol testing requirements vary by Operating Administration.

(i) Subject Pool(s):

The Commissioner will establish a pool(s) composed of all positions designated as being safety-sensitive by the appointing authorities.

(ii) Random Sample:

Once each month, the Commissioner will select, at random, a sample of positions in the pool(s). To the extent that applicable law and regulations differ, the numbers of employees to be tested and the scheduling of employee selection will be determined by the Commissioner in accordance with those laws and regulations.

(iii) Notice of Selection:

The Commissioner will notify each Appointing Authority of positions, if any, that have been selected from the pool(s). The notice will contain the effective date to be utilized for determining the incumbent(s) to be tested and to determine the commencement of testing. Incumbents selected for random drug or alcohol testing will be notified of the election by the Appointing Authority.

(iv) Multiple Incumbents:

Should a selected position have more than one incumbent as of the specified effective date, all incumbents will be subject to testing.

(v) Incumbents on Leave:

If an employee selected for drug or alcohol testing was on any form of paid or unpaid leave as of the effective date specified in the Notice of Selection and the incumbent returns to duty within 30 calendar days of the effective date, the Appointing Authority should specify a date and time by which the



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employee must report for testing. The date and time must not be more than two business days following the date the employee returns to duty.

3. Post-Accident Testing:

Any employee performing safety-sensitive duties who is involved in an on-the-job accident as defined by specific DOT operating administrations is required to undergo drug and alcohol testing as soon as possible following the accident.

- (i) For FMCSA regulated employees/CDL drivers and Federal Transit Administration (FTA) regulated employees, testing is required when the individual has a vehicular accident and:
 - I. The accident involved the loss of human life;
 - II. The employee received a citation for a moving traffic violation arising from the accident and the accident resulted in injury to a person who immediately receives medical treatment away from the scene of the accident; or
 - III. The employee received a citation for a moving traffic violation arising from the accident and one or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
 - IV. If the accident involved the loss of human life, any employee present in the vehicle at the time of the accident will be required to undergo drug and alcohol testing.
 - V. Under no circumstances will an employee who may be subject to post-accident testing consume alcohol between the time of the accident and the administration of an alcohol test or until efforts to administer such test have been discontinued.
 - VI. An alcohol test should be administered within two hours following an accident. If for any reason the test cannot be administered within eight hours of an accident, the Appointing Authority will cease attempting to administer the test.
 - VII. A drug test will be administered as soon as possible following an accident, but not later than 32 hours following an accident.
 - VIII. In any instance in which an employee is not tested within specified time limits, the Appointing Authority must prepare and maintain on file a record of the reasons the test was not promptly administered.



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(ii) For Federal Aviation Administration (FAA) employees:

Any employee whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident is required to undergo alcohol and other drug testing as soon as possible following the accident. A drug test will be administered as soon as possible following an accident, but not later than 32 hours following an accident.

(iii) For US Coast Guard (USCG) employees:

Post-accident testing is included under reasonable suspicion testing and covers anyone directly involved in a marine casualty or accident, or a serious marine incident as defined in 49 CFR Part 4.

4. Return-to-Duty:

Any employee who has been subject to alcohol testing and whose test result indicates that he/she has misused alcohol must undergo a return-to-duty test. The test must indicate an alcohol concentration of less than 0.02 percent before the employee can be returned to safety-sensitive duties.

5. Follow-Up:

Following a determination by a Substance Abuse Professional that an employee is in need of assistance in resolving problems associated with alcohol misuse, the Appointing Authority will ensure that the employee is subject to unannounced follow-up alcohol testing. Mandatory follow-up testing will be conducted only when the employee is scheduled to perform safety-sensitive functions. Testing must be conducted at least six times in the first 12 months following return to safety-sensitive duty and may, upon the recommendation of the Substance Abuse Professional, be continued for up to 60 months.

6. Reasonable Suspicion:

Any employee may be required to submit to drug and/or alcohol testing when the Appointing Authority has reasonable suspicion to believe that he/she has used illegal drugs or is under the influence of illegal drugs or alcohol while on duty. The determination of reasonable suspicion should be made by a supervisor or other official who is trained to make those determinations. (The training will consist of one hour of illegal drug training and one hour of alcohol training which covers physical, behavioral, speech, and performance indicators of probable illegal drug use or alcohol misuse.) A written record, signed by the observing official, must be made to document the observations. Alcohol testing may be conducted only when the employee is scheduled to perform safety-sensitive duties.



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(d) Alcohol Testing Results:

Any employee whose test indicates an alcohol concentration of 0.02 percent or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original test.

1. FMCSA & FTA regulated employees:

- (i) Any employee whose alcohol confirmation test indicates an alcohol concentration of 0.02 percent or greater will be immediately removed from safety-sensitive duties for a period of not less than 24 hours. Any disciplinary or adverse action deemed appropriate by the Appointing Authority may also be imposed.
- (ii) An employee removed from duty will be deemed to have voluntarily forfeited pay for any scheduled duty time during the 24 hour period immediately following the removal. The employee will be notified, in writing, of the forfeiture of pay.
- (iii) Any employee whose alcohol confirmation test indicates an alcohol concentration of 0.04 percent or greater will not be returned to safety-sensitive duties until the employee has been evaluated by a Substance Abuse Professional and is able to provide documentation that the Substance Abuse Professional has certified that he/she is fit to return to duty.
- (iv) Any employee whose alcohol confirmation test indicates an alcohol concentration of 0.02 percent or greater will not be returned to safety-sensitive duties until a subsequent test indicates an alcohol concentration of less than 0.02 percent.

2. FTA:

An employee whose BAC is .02 or .03 will not be allowed to perform safety-sensitive functions until:

- (i) the employee's BAC is less than .02, or
- (ii) the start of the employee's next regular duty period, but not less than 8 hours following the accident. An employee whose BAC is .04 or greater must comply with procedures in 49 CFR Part 40.

3. Coast Guard:

An individual under the influence when: (1) He/she is operating a recreational vessel and has a BAC of .08 or more; (2) He/she is operating a



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vessel other than a recreational vessel and has a BAC of .04 or greater; or (3)
The effect of the intoxicant is apparent by observation.

(9) **On-Site Drug Testing:**

(a) Testing:

Upon establishment of a written policy, an Appointing Authority may conduct on-site drug testing according to the provisions of these policies, for any type of drug testing except testing of safety sensitive-employees.

(b) On-site facilities and procedures must meet all requirements established by the Official Code of Georgia 34-9-415 for drug testing.

(c) On-site collectors meeting the training requirements set forth by the Official Code of Georgia 34-9-415, are the only persons authorized to collect urine specimens for drug testing.

(d) Testing devices used for on-site drug testing must meet the requirements of the regulations established by the United States Food and Drug Administration (21 CFR Part 800).

(e) Observed Collection:

If an individual demonstrates behavior that meets the requirements for an observed collection as described earlier in this Rule, the individual will be required to report to an approved collection site to have the observed collection performed by a representative of the collection facility or an approved subcontractor of the same sex as the donor.

(f) On-Site Test Results.

On-site negative results are not subject to further analysis. The collection device should be disposed of immediately in the proper manner as described by the manufacturer. The Custody and Control form should be retained in the office of the official conducting the test for a minimum of 30 days.

(g) The Appointing Authority must report the results and the Chain of Custody form information in a method and timeframe established by the Department of Administrative Services.

(h) Non-negative results must be submitted under complete chain of custody to a Substance Abuse and Mental Health Services Administration certified laboratory for confirmation testing including re-screen, gas chromatography/mass spectrometry confirmation and forwarding for MRO review and verification.



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- (i) The Appointing Authority may not take action until a certified laboratory has confirmed a positive initial test to the Department of Administrative Services.
- (j) The Medical Review Officer must adhere to the following reporting and contact procedure for confirmation testing.

(10) **Medical Review Officer Review Procedure.**

(a) Laboratory Reports:

The testing laboratory must forward the results of all drug tests to the Medical Review Officer, who must assure the security of such results.

1. Negative Results:

The Medical Review Officer must forward negative results of drug tests to the Department of Administrative Services as soon as practicable.

2. Positive Results:

Laboratory reports indicating the presence of an illegal drug(s) will be retained by the Medical Review Officer until a final determination is reached. Such information is confidential and will only be available to the Medical Review Officer or designee and the affected donor. Positive laboratory reports will be reviewed and determinations of legal or illegal usage will be made in accordance with procedures established by the Medical Review Officer.

(b) Contact Procedure:

The Medical Review Officer will, upon receipt of a positive laboratory report, attempt to contact the donor who provided the urine sample at the daytime or home phone number indicated on the CCF/drug testing form. The Medical Review Officer will attempt to determine if there is an alternative medical explanation for the positive report.

- 1. If the donor expressly refuses to discuss with the Medical Review Officer the results of a drug test, declines the opportunity to provide an explanation of the results, or admits to the usage of an illegal drug(s), the Medical Review Officer, without further action or review, will report to the Department of Administrative Services that the results of the drug testing indicate that the donor has used an illegal drug(s).
- 2. If the Medical Review Officer is unable to directly contact the donor within two (2) business days of the initial attempt, he/she will contact the Department of Administrative Services who will contact the appropriate Appointing Authority. The Appointing Authority will attempt to contact the donor and will inform the



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donor that he/she must personally contact the Medical Review Officer by the end of the next business day, or he/she will be considered to have tested positive for the use of illegal drugs.

3. If the Appointing Authority is unable to contact the donor within two (2) business days of the initial attempt, the Appointing Authority will notify the Medical Review Officer. The Medical Review Officer will then deem the donor to have tested positive for the use of illegal drugs.

(i) Reporting Determination of Illegal Drug Usage:

If a donor is unable to provide an alternative medical explanation for the presence of an illegal drug(s), the Medical Review Officer, after appropriate review, will notify the Department of Administrative Services that the test result is positive.

(11) **Substance Abuse Testing Results:**

(a) Rejected or Unsuitable Sample:

A donor whose urine sample is rejected or determined to be unsuitable by the testing laboratory for any reason other than that it is an adulterated or substituted sample, may in the discretion of the Appointing Authority, be directed to appear for retesting. The retesting may be conducted as an observed sample.

(b) Negative Test Results:

1. Transmittal:

The Department of Administrative Services will make available or transmit all negative test results to the appropriate Appointing Authority as quickly as possible.

2. Usage:

Negative test results may be utilized by any other agency for any appropriate purpose for a period of thirty (30) calendar days after the date the test was administered.

(c) Positive Results:

An individual whose results of substance abuse testing indicate that the individual has illegally used drug(s) will be subject to disciplinary action as specified in other provisions of this Rule or as deemed appropriate by the Appointing Authority.



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(d) Confidentiality of Results:

A report from a Medical Review Officer that a donor has used an illegal drug(s) is accessible only to staff of the Appointing Authority and the Department of Administrative Services as necessary to comply with these polices or with state and federal law, and will not be considered a public record. The Appointing Authority and the Commissioner should establish policies to assure the confidentiality of such information and to identify those employees who are entitled to the information.

(12) **Dismissal:**

This is the exclusive procedure for dismissal under the provisions of this Rule.

- (a) If an employee expressly refused to appear for substance abuse testing or meets the definition of "Refusal" according to this document, the Appointing Authority will notify the employee, in writing, of immediate termination of employment. The termination will be effective as of the date of the notice. The employee will also be disqualified from holding any position with a State employer for a period of two (2) years from the date of the notice.
- (b) If a P.O.S.T. certified employee has a verified positive drug test result or a confirmed positive alcohol test, the Appointing Authority will notify the employee, in writing, of immediate termination of employment.
- (c) If any other employee has a verified positive drug test result or a confirmed positive alcohol test, that employee shall be subject to disciplinary action, up to and including termination.
- (d) Any employee allowed to retain his/her job following a positive substance abuse test, must comply with a Return-to-Duty Agreement specified by the Appointing Authority.
- (e) See Rule 478-1-.24 for dismissal procedures for classified employees under this provision.
- (f) For employees in the classified service the dismissal will be the final determination of adverse action and must include these elements:
 - 1. Identify the effective date of the action;
 - 2. Identify the date the employee expressly refused substance abuse testing or the date the employee underwent drug testing; and/or
 - 3. Indicate that the Medical Review Officer determined the employee to have used an illegal drug(s); and the specific illegal drug(s) identified;



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4. Inform the employee that he/she will be disqualified from holding any position with a state employer for a period of two (2) years from the notice;
5. Advise the employee that he/she may appeal the action to the Board by filing an appeal with the Office of State Administrative Hearings within ten (10) calendar days from the date the employee receives written notice of the final action. Any filing will be considered as timely if postmarked within the time allowed for an appeal but will not be considered filed until actually received by the Office of State Administrative Hearings.

(13) **Problem Use of Alcohol or Other Drugs:**

An employee who notifies the appointing authority of an alcohol or illegal drug problem shall be entitled to maintain state employment provided:

- (a) The notification is made in writing to the individual(s) designated by the Appointing Authority;
- (b) The employee notifies the appointing authority of such problem usage before being notified to report for an alcohol or other drug test and prior to arrest for a criminal offense;
- (c) The employee agrees to an assessment and recommended treatment by a substance abuse professional chosen by the appointing authority. The treatment will be at the employee's expense;
- (d) The employee provides certification of satisfactory completion of the recommended treatment program;
- (e) The employee agrees, in writing, to a Return-to Duty contract that includes but is not limited to a Return-to Duty alcohol and/or other drug test and periodic unscheduled Follow-up tests for up to five (5) years. Failure to comply with the contract and/or a positive test will result in immediate termination.
- (f) This entitlement shall be available no more than twice in a five (5) year period.

(14) **Drug Related Criminal Convictions:**

(a) Minimum Sanctions:

The suspension, termination and disqualification sanctions prescribed in this rule are minimum sanctions. An appointing authority may implement additional or more stringent sanctions.

- (b) Applicants with a drug related conviction are disqualified from working for any state entity for two (2) years from the date of conviction.



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(c) Employees who are convicted of a drug related crime:

1. First Offense:

Employees are suspended without pay for a period of not less than three (3) months and are allowed to return only after meeting the requirements in (13)(c), (d) and (e).

2. Subsequent Offense:

The employee shall be terminated.

Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4, 45-22-11.