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

(1) Introduction:

The General Assembly found that unlawful drug activity is a serious threat to the public health, safety, and welfare and declared that the public workforce must be free of any person who would knowingly engage in such activity.

The State is committed to maintaining a drug-free and alcohol-free workplace. In support of this commitment, the State conducts substance abuse testing as described in this Rule. Employees who violate workplace expectations are subject to disciplinary action, up to and including dismissal and disqualification from employment, as outlined in this Rule and in Sub-Rules 478-1-.21A through 478-1-.21G.

(2) Applicability:

The policies and procedures within this Rule apply to all agencies of the Executive Branch, local departments of Public Health, Authorities, and Community Service Boards. This Rule does not apply to the Board of Regents of the University System of Georgia, Legislative Branch, or Judicial Branch.

(3) Definitions:

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, *Terms and Definitions*:

(a) "Adulterated Sample" means a specimen that has been altered and 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 an abnormal concentration.

(b) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.

(c) "Alcohol Concentration" or "Alcohol Content" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an alcohol test. For blood alcohol tests it means the level of alcohol in terms of grams of alcohol per 100 milliliters of blood.

(d) "Alcohol Confirmation Test" means a subsequent test using an evidential breath testing device (EBT) following an alcohol screening test with a result of 0.02 or greater. The EBT must be approved by the National Highway Traffic Safety Administration (NHTSA) and placed on its "Conforming Products List of Evidential

Breath Measurement Devices." Such testing must be performed by a certified Breath Alcohol Technician.

(e) "Alcohol Screening Device" (ASD) means a breath or saliva device that is approved by NHTSA and placed on a Conforming Products list for such devices.

(f) "Alcohol Screening Test" means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath, saliva, or blood specimen.

(g) "Alcohol Test" or "Alcohol Testing" means conducting an alcohol screening test and, if needed, an alcohol confirmation test.

(h) "Appointing Authority" means, for purposes of this Rule, the agency/entity or an official with decision-making authority within the agency/entity.

(i) "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and can operate an evidential breath testing device in accordance with federal alcohol testing regulations.

(j) "Chain of Custody" means the procedure used to document the handling of a urine or other specimen authorized within federal testing programs from the time the donor gives the specimen to the collector until the specimen is destroyed.

(k) "Collector" means a person who:

1. instructs and assists donors during the drug testing collection process;

2. receives and makes an initial inspection of specimens provided by donors;

3. completes the Custody and Control Form (CCF); and,

4. is trained according to either United States Department of Transportation (DOT) standards for federally regulated donors or Health and Human Services standards for non–federally regulated donors.

(l) "Controlled Substance" means a drug or substance in Schedules I-V of O.C.G.A. 16-13-21, et seq., or 21 C.F.R. Part 1308 declared by state or federal law to be illegal for sale or use, unless used with a valid prescription from a health care practitioner.

(m) "Custody and Control Form (CCF)" means the drug testing form used to follow the chain of custody procedure.

(n) "Dangerous Drug" means any drug or substance, other than a controlled substance, declared by state or federal law to be illegal for sale or use, unless used with a valid prescription from a health care practitioner.

(o) "Donor" means an individual providing a specimen for drug testing.

(p) "Drug Testing" or "Drug Test" means the collection and testing of urine administered as required by applicable regulations for the particular testing program. Testing of substances other than urine is permitted only when authorized by such governing regulations.

(q) "Federally Regulated Transportation Position" means any transportation position whose incumbent is required to undergo drug and alcohol testing pursuant to United States Department of Transportation or United States Coast Guard regulations. In general, such positions are those for which the duties require the possession of a valid commercial driver's license or involve public transportation or maritime functions.

(r) "High-Risk Position" means a position whose incumbent regularly performs high-risk work. Examples include, but are not limited to, officers required to carry a firearm, medical professionals, non–federally regulated drivers, in-home care providers, firefighters, heavy equipment operators, pilots, and aircraft mechanics. The term high-risk position does not include federally regulated transportation positions.

(s) "High-Risk Work" means those duties where inattention or errors in judgment will have the potential for significant risk of harm to the individual or others.

(t) "Illegal Drug" means, but is not limited to, marijuana/cannabinoids (THC), cocaine, amphetamines/meth-amphetamines, opioids, phencyclidine (PCP), or any controlled substance or dangerous drugs not used in a lawful manner. The term illegal drug does not include any drug used pursuant to, and in accordance with, a valid prescription and not otherwise prohibited by state or federal law.

(u) "Medical Marijuana" or "medical cannabis" means a cannabis product prescribed by a physician for medical use and used by an applicant or employee in accordance with state law concerning the Medical Cannabis Patient Registry.

(v) "Medical Review Officer" or "MRO" means 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 results.

(w) "Reasonable Suspicion" means a determination by a designated agency/entity official that an employee may not be free of alcohol and/or illegal drugs while at work or performing assigned duties. The designated official may be a manager, supervisor, human resources representative, or other agency/entity staff assigned responsibility for determining whether reasonable suspicion exists.

(x) "Safety-Sensitive Transportation Function or Duties" means transportation-related work that requires an employee, or selected applicant for a position with such work, to undergo drug and/or alcohol testing, pursuant to United States Department of Transportation (US DOT) or United States Coast Guard regulations.

(y) "Sample" or "Specimen" means urine provided by a donor for drug testing. Where regulations governing a drug testing program allow for the testing of some other bodily fluid or tissue, such substance from a donor would also be considered a "sample" or "specimen."

(z) "Split Specimen Collection" means a drug testing collection in which urine is divided into two (2) separate specimen bottles: a primary specimen that is tested and a split specimen that remains unopened and available for retesting.

(aa) "Substance Abuse Professional (SAP)" means a properly certified professional who evaluates employees who have violated drug and/or alcohol regulations or policies and makes recommendations concerning education, treatment, follow-up testing, and aftercare. For federally regulated transportation positions, a Substance Abuse Professional must meet all US DOT qualification requirements.

(bb) "Substance Abuse Testing" means screening for the presence of alcohol or illegal drugs in accordance with this Rule.

(cc) "Substituted Sample" means a specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with human urine.

(4) Drug-free and Alcohol-free Standards:

(a) Employees are prohibited from unlawfully manufacturing, distributing, selling, dispensing, possessing, or using a controlled substance, marijuana, or a dangerous drug, which includes the use of prescription medication prescribed to another.

(b) While in the workplace or otherwise in work status, employees must be free from alcohol and illegal drugs.

(c) Employees who are legally using a drug (or other substance) with a warning about a side effect that could substantially impair the safe performance of assigned duties must seek and receive authorization from a designated agency/entity official before performing high-risk work or safety-sensitive transportation functions.

(d) Because of federal prohibitions, an agency/entity cannot authorize federally regulated transportation employees to have medical marijuana in their system while performing safety-sensitive transportation functions.

(e) Appointing authorities are responsible for informing their staff of drug-free and alcohol-free workplace expectations, including testing requirements, procedures, consequences for violations, resource information on possible effects of drug use and alcohol misuse, and available assistance.

(f) Applicants and employees are expected to report for and complete ordered substance abuse testing, as directed. Consequences for failing to do so, for otherwise refusing testing, and for testing positive are outlined in Rule 478-1-.21 and Sub-Rules 478-1-.21B-G.

(5) Types of Testing

The State conducts drug and alcohol testing based on the type of work assigned to a position and safety interests. Applicants and/or employees are subject to the types of drug and alcohol tests indicated below:

(a) **pre-employment** (post–job offer) drug testing for high-risk and federally regulated transportation positions (See Sub-Rules 478-1-.21B and 478-1-.21D);

(b) **random** drug and/or alcohol testing for high-risk and federally regulated transportation positions (See Sub-Rules 478-1-.21C and 478-1-.21D);

(c) **reasonable suspicion** drug and/or alcohol testing of any employee when a designated agency/entity official determines there is a compelling reason to suspect an employee is not free from alcohol or illegal drugs (See Sub-Rules 478-1-.21D and 478-1-.21E);

(d) **post-accident** drug and/or alcohol testing for federally regulated transportation positions whose incumbent was involved in an accident, as defined by the applicable federal operating administration (See Sub-Rule 478-1-.21D);

(e) **return-to-duty** drug and/or alcohol testing for federally regulated transportation employees previously involved in a drug/alcohol-free workplace violation and for an employee who returns to work following a positive alcohol test or self-disclosure of substance abuse (See Sub-Rules 478-1-.21A, 478-1-.21D, and 478-2-.21F);

(f) **follow-up** drug and/or alcohol testing as directed by a Substance Abuse Professional for employees previously involved in a drug/alcohol-free workplace violation and for an employee who returns to work following a positive alcohol test or self-disclosure of substance abuse (See Sub-Rules 478-1-.21A, 478-1-.21D, and 478-2-.21G); and

(g) other substance abuse testing programs, as authorized by law.

(6) Administration of Program:

(a) Drug and alcohol testing must be conducted in accordance with applicable federal and state laws and regulations, and in accordance with procedures established by the DOAS Commissioner. The DOAS Commissioner will enter into whatever contracts are necessary to provide for testing and verification services. These testing programs shall give due consideration to security of sample collection, chain of custody requirements, accuracy of testing, and confidentiality of results.

(b) Expense of Substance Abuse Testing:

The expense of substance abuse testing is the responsibility of the agency/entity. If a donor requests that a drug test sample be submitted for separate analysis, the appointing authority may seek payment or reimbursement of all or part of the cost of the separate analysis from the donor, if the appointing authority has a written policy which specifies the donor's responsibility to pay for the separate analysis. However, the appointing authority cannot make payment, reimbursement, or ability to pay a condition for performing the separate analysis. The appointing authority is responsible for ensuring that the separate analysis is performed in a timely manner.

(c) Work Time:

1. All time necessary for an employee to undergo substance abuse testing is considered work time, including any travel time to and from the collection or testing facility.

2. Applicants taking pre-employment drug tests before they start employment are not paid, and the time used for drug testing is not considered work time.

(d) Substance Abuse Test Results – Access and Confidentiality:

1. Substance abuse test results are considered confidential and not subject to public disclosure. Any electronic transmission of substance abuse test results must, at a minimum, be encrypted or password protected.

2. Access is limited to staff with a need to know to administer this Rule or comply with law.

3. Staff of DOAS and the agency/entity ordering substance abuse testing have access to results as needed to administer the testing program and facilitate appropriate employment action.

4. Staff of an agency/entity currently employing an individual who did not successfully complete testing ordered by another agency/entity pursuant to this Rule has access to results as needed to administer appropriate employment action.

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

(7) Substance Abuse Testing Refusal:

(a) Applicants and employees who are directed to undergo substance abuse testing and subsequently refuse will not be employed or remain employed with the State and are disqualified from state employment for a period of two (2) years from the date of refusal.

(b) An applicant who declines an offer of employment for reasons unrelated to substance abuse testing will not be deemed to have refused testing.

(c) An individual who expressly refuses to undergo directed substance abuse testing, engages in conduct that willfully obstructs the testing process, or otherwise fails to fully cooperate with the collection or testing process will be deemed to have refused testing.

(d) An individual who fails to appear for substance abuse testing, as directed, or who fails to remain at the site until the collection or testing process is complete, will be deemed to have refused testing.

(e) An individual who fails to provide adequate urine (or other substance authorized by applicable federal regulation) for drug testing will be deemed to have refused testing, unless the MRO finds there was a valid medical reason.

(f) An individual who fails to provide adequate breath or saliva (or blood for United States Coast Guard–regulated post-accident testing) for alcohol testing will be deemed to have refused testing, unless the evaluating physician finds there was a valid medical reason.

(g) An individual who is found to have brought a clean urine sample or substitute to the collection site or admits to having tampered with her/his specimen will be deemed to have refused testing.

(h) If the testing laboratory and the Medical Review Officer (MRO) determine that the urine sample of a donor is an adulterated or substituted sample, the donor will be deemed to have refused testing.

(8) Observed Collection:

(a) An observed drug testing collection may be conducted only by a representative of the collection facility or a subcontractor who is the same gender as the gender with which the donor identifies, which may be the same as, or different from, the donor's sex assigned at birth.

(b) Collection Site Criteria for Observed Collection:

1. A collection site representative may recommend observed collection when:

(i) a sample temperature is outside the acceptable range of 90 through 100 degrees Fahrenheit,

(ii) the sample has an unusual appearance, or

(iii) the donor's behavior or appearance is suspicious during the collection steps.

2. A sample will not be collected as an observed collection unless the necessity for it has been confirmed by a supervisor of the site representative or other appropriate collection site personnel.

3. Any other circumstances require the approval of the appointing authority.

(c) An appointing authority may direct a sample to be collected under direct observation 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.

(d) Federally regulated return-to-duty and follow-up test collections will be observed.

(9) On-Site Drug Testing:

(a) Eligibility:

Upon establishing a written policy, an appointing authority may conduct on-site drug testing according to the provisions of this Rule for any type of drug testing except testing of federally regulated transportation employees.

(b) On-site collection must be performed with due regard for privacy in a manner designed to prevent substitution or contamination of the specimen.

(c) Specimens will be collected and documented in a manner that ensures chain of custody.

(d) On-site collection may be conducted by any of the following: physician, physician assistant, nurse, person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologies, or the Georgia Department of Community Health, or person certified or employed by a collection company.

(e) Testing devices used for on-site drug testing will meet applicable United States Food and Drug Administration requirements.

(f) Observed Collection:

If a donor demonstrates behavior that meets the requirements for an observed collection as described in Section (8) of this Rule, the donor 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 who is the same gender with which the donor identifies, which may be the same as or different from the donor's sex assigned at birth.

(g) On-Site Test Results:

(i) 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 (CCF) should be retained by the official conducting the test for a minimum of 30 days.

(ii) The appointing authority must report the results and the CCF information in a method and timeframe established by the Department of Administrative Services.

(iii) 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 forwarded for Medical Review Officer (MRO) verification and release.

(h) The appointing authority may not take dismissal action based on an on-site test result until a certified laboratory and the MRO have confirmed, verified, and released the test result.

(i) The MRO must adhere to the reporting and contact procedure in Section (10) of this Rule.

(10) Medical Review Officer (MRO) Review Procedure:

(a) Laboratory Reports:

The testing laboratory must forward the results of all drug tests to the MRO for verification and release.

1. Negative Results:

The MRO will verify and release negative results of drug tests to the appointing authority as soon as practicable.

2. Non-negative Results:

   Laboratory reports indicating the presence of an illegal drug(s), adulteration, substitution, or an invalid test result will be retained by the MRO until a final determination is reached. Such information is confidential and will be available only to the MRO or designee and the affected donor during the review process. Positive laboratory reports will be reviewed and determinations of legal or illegal usage will be made in accordance with procedures established by the MRO.

(b) Contact Procedure:

The MRO or designee will, upon receipt of a positive, adulterated, substituted, or invalid laboratory test result, attempt to contact the donor at the phone numbers indicated on the CCF/drug testing form to determine whether the donor wants to discuss the result. The MRO will attempt to determine if there is an alternative medical explanation for the test result.

1. If the test result was determined invalid, the MRO will cancel the test and, after speaking with donor, make a recommendation for whether to require another collection under direct observation. If there is no contact with the donor, observed collection will be recommended.

2. If the donor expressly refuses to discuss with the MRO the results of a drug test, declines the opportunity to provide an explanation of the results, or admits to use of an illegal drug(s), adulteration, or substitution, the MRO, without further action or review, will report the test result as positive or a refusal, as applicable.

3. If a donor is unable to provide an alternative medical explanation for the presence of an illegal drug(s), the MRO, after appropriate review, will report the test result as positive for an illegal drug(s).

4. If after reasonable efforts the MRO or designee is unable to directly contact the donor, the MRO or designee will contact the appropriate appointing authority. The appointing authority or designee will attempt to contact and inform the donor that s/he must personally contact the MRO as soon as possible and that the MRO may report the test result as positive or a refusal, as applicable, if not contacted within 72 hours. The appointing authority is to notify the MRO when the message was delivered to the donor.

5. An appointing authority or designee who is unable to contact the donor within two (2) business days of the initial attempt will so notify the MRO. The MRO will deem the donor to have tested positive or refused testing, as applicable.

(c) Final Determination:

The decision of the MRO regarding the verification of a positive, adulterated, or substituted drug test result will be final.

(11) Substance Abuse Testing Results:

(a) Rejected or Unsuitable Sample:

A donor whose sample is rejected or determined to be unsuitable by the testing laboratory is subject to retesting as indicated in Sub-Rules 478-1-.21B through 478-1-.21G. The retesting may be conducted as an observed collection at the discretion of the appointing authority or as required by federal regulations for return-to-duty and follow-up testing.

(b) Adulterated or Substituted Sample:

A donor whose sample is determined by the MRO to be adulterated or substituted is considered to have refused substance abuse testing.

(c) Negative Result:

1. Upon receiving a negative test result, the applicant/employee fulfills the applicable testing condition of employment.

2. Negative drug test results may be utilized by the appointing authority that ordered the testing for any appropriate purpose for a period of 30 calendar days after the date the test was administered.

(d) Positive Result:

1. An applicant/employee who tests positive for alcohol or use of an illegal drug(s) is subject to disciplinary action and disqualification as outlined in Sub-Rules 478-1-.21A through 478-1-.21G.

2. A limited exception is available when a drug test result is positive for marijuana and the MRO notated the result to indicate that the donor provided proof of eligibility to lawfully use medical marijuana.

   (i) This exception gives an appointing authority the option to order and pay for an assessment by an occupational healthcare professional of the employee's ability to safely perform assigned duties. Based on the assessment, the appointing authority would determine appropriate employment action.

   (ii) The exception is not available for federally regulated testing or for pre-employment testing for a high-risk position.

(12) Dismissal of Classified Employees:

(a) When a classified employee is dismissed from employment for refusing testing or for having a positive drug or alcohol test, any adverse action taken by the appointing authority must comply with the provisions of Rule 478-1-.26, *Adverse Action for Classified Employees.*

(b) When this Rule requires immediate dismissal, the appointing authority is to process the action in accordance with Section (11) of Rule 478-1.26, *Adverse Action for Classified Employees.*

(c) A classified employee who tests positive for alcohol or an illegal drug(s) is considered to have engaged in misconduct. A classified employee who refuses ordered testing is considered to have engaged in insubordination and misconduct.

(13) Appeals:

(a) Dismissal actions can be appealed only by classified employees, as outlined in Rule 478-1-.26, *Adverse Actions for Classified Employees*, and Rule 478-1-.27, *Appeals and Hearings for Classified Employees*.

(b) An applicant/employee who was deemed to have refused substance abuse testing may request a review of the two (2) year disqualification if the applicant/employee does not believe that the circumstances described in Section (7) of this Rule were applicable in her/his situation.

1. The request must be submitted in writing to the DOAS Commissioner or designee. It must be postmarked or delivered within ten (10) business days from the date of the notice of the disqualification.

2. The request must identify at a minimum:

   (i) the date on which the applicant/employee was directed to report for testing;

   (ii) the agency that directed the applicant/employee for testing;

   (iii) why the employee/applicant disputes the refusal determination; and,

   (iv) any supporting documentation.

3. The DOAS Commissioner or designee will consider all requests for review and may request additional information necessary to reach a decision.

4. The decision of the DOAS Commissioner or designee is final.

Authority:
O.C.G.A. §§45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board)

Other State Law References:

O.C.G.A. §§ 16-12-190, et seq. (medical cannabis)
O.C.G.A. § 16-13-21 (controlled substance and dangerous drug)
O.C.G.A. §§ 45-20-90, et seq. (random testing for high-risk positions)
O.C.G.A. §§ 45-20-110, et seq. (pre-employment testing for high-risk positions)
O.C.G.A. §§ 45-23-1, et seq. (Georgia Drug-free Public Work Force Act of 1990)

Federal Law References:

33 C.F.R. §§ 95, et seq., United States Coast Guard - Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug
46 C.F.R. §§ 4, et seq., United States Coast Guard - Marine Casualties and Investigations
46 C.F.R. §§ 16, et seq., United States Coast Guard Regulations - Chemical Testing
49 C.F.R. §§ 40, et seq., Procedures for Transportation Workplace Drug and Alcohol Testing Programs
49 C.F.R. §§ 382 et seq., Federal Motor Carrier Administration - Controlled Substances and Alcohol Use and Testing

49 C.F.R. §§ 655, et seq., Federal Transit Authority - Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
41 U.S.C. §§ 8101, et seq., Drug Free Workplace Requirements for Federal Contractors
53 Fed. Reg. 11979, et seq., as amended, HHS Regulations - Mandatory Guidelines for Federal Workplace Drug Testing Programs