

# Georgia Department of Public Safety

## Policy Manual

<b>SUBJECT</b> <b>DRUG AND ALCOHOL TESTING</b>	<b>POLICY NUMBER</b> <b>5.08</b>
<b>DISTRIBUTION</b> <b>ALL EMPLOYEES</b>	<b>REVISED DATE</b> <b>1/3/2020</b>
	<b>POLICY REVIEWED</b> <b>1/3/2020</b>

### 5.08.1 Policy

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.

As members of the Georgia Department of Public Safety, it is absolutely mandatory that we maintain standards of conduct and work performance that ensures public safety and public trust. The DPS has a compelling interest in ensuring that all employees are of the highest integrity. It is the policy of the DPS that testing for the presence of illegal drugs, controlled substances or alcohol will be required in certain circumstances.

### 5.08.2 Definitions

- A. Adulterated Sample – 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 – the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.
- C. Alcohol Confirmation Test – 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.
- D. Alcohol Screening Device (ASD) – a breath or saliva device that is approved by NHTSA and placed on a Conforming Products list for such devices.
- E. Alcohol Screening Test – an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath, saliva or blood specimen.
- F. Alcohol Test of Alcohol Testing – conducting an alcohol screening test and, if needed, an alcohol confirmation test.
- G. Breath Alcohol Technician (BAT) – 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.

- H. Controlled Substance – a drug or substance on 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.
- I. Dangerous Drug – 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.
- J. Drug Testing or Drug Test – 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.
- K. Federally Regulated Transportation Position – 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 for maritime functions.
- L. High-Risk Work –those duties where inattention or errors in judgment will have the potential for significant risk of harm to the individual or others.
- M. High-Risk Position – a position whose incumbent regularly performs high-risk work regardless of whether it is on a full-time, part-time, hourly, or temporary basis. All employees in P.O.S.T. certified positions, as well as those in Dispatcher, Weight Inspector, Safety Officer and Mechanic positions are considered to perform high-risk work.
- N. Illegal Drug – includes 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.
- O. Medical Marijuana or low THC oil – an oil, prescribed by a physician for medical use, containing no more than 5% tetrahydrocannabinol (THC), and an amount of cannabidiol (CBD) that is at least equal to the amount of THC.
- P. Medical Review Officer (MRO) – 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.
- Q. Reasonable Suspicion – a determination by an employees’ Commanding Officer, Adjutant, or Division Director that he or she may not be free of alcohol and/or illegal drugs while at work or performing assigned duties.
- R. Split Specimen Collection – 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.
- S. Substance Abuse Professional – 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.

- T. Substituted Sample – a specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with human urine.

### **5.08.3 General Provisions**

- 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 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 section 5.08.4.
- D. 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:
  - 1. Ensure that they are cleared by their medical provider to fully perform their assigned duties while on such drugs/substance, and
  - 2. Seek and receive authorization from their supervisor before reporting for duty.
- E. Any employee in a high-risk or federally regulated transportation position is prohibited from having medical marijuana in their system while performing the duties of that position.
- F. Any employee who is suspected of driving under the influence in violation of the law while on-duty or while commuting to work will be investigated in accordance with DPS Policy 11.05 – DUI Enforcement.
- G. Testing provisions for individuals in federally regulated transportation positions are subject to the US Department of Transportation (DOT) alcohol and other drug testing regulations (see State Personnel Board Rule 21D). The Drug Testing Coordinator will notify the applicable supervisor of specific testing requirements at the time an employee in a federally regulated transportation position is selected or required to complete drug and/or alcohol testing.
- H. Drug and alcohol testing must be conducted in accordance with applicable federal and state laws and regulations, and in accordance with the procedures established by the Human Resources Division.
- I. An employee selected for, or directed to complete substance abuse testing will be considered as being on duty for all time necessary to undergo the testing process, including any travel time to and from the collection or testing facility.
- J. The expense of testing is the responsibility of the Department. 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, it is the donor's responsibility to pay for the split sample/reanalysis. In such a case, the Department will seek payment or reimbursement for the cost of the split specimen/reanalysis from the donor. However, payment, reimbursement, or ability to pay is not a condition for performing the split sample/reanalysis testing.

- K. Confidentiality of Results. Substance abuse test results are considered confidential and not subject to public disclosure. Access to test results are accessible only to the following Departmental staff, as necessary to comply with this policy, State Personnel Board Rule 478-1.21, or state and federal law: the Commissioner of the Department of Public Safety, the Limited Appointing Authority of the employee, the Directors of Human Resources, Legal Services and the Office of Professional Standards, and Human Resources staff designated as Drug Testing Coordinator(s).

#### **5.08.4 Consequences of Positive Drug or Alcohol Testing Result or Refusal**

- A. An employee whose drug test is reported by the MRO as positive, adulterated, or substituted, or who otherwise refuses a drug test will be immediately dismissed and disqualified from State employment for a period of two (2) years from the date of testing or refusal, whichever is later.
- B. An employee who refuses alcohol testing will be immediately dismissed and disqualified from State employment for a period of two (2) years from the date of refusal.
- C. An employee who receives a positive alcohol confirmation test result of 0.02 or greater from the testing facility will be subject to disciplinary action up to, and including, dismissal from employment.
  - 1. At a minimum, the employee will be prohibited from performing work for at least 24 hours from the time the test was administered.
  - 2. If the employee is not dismissed:
    - a. All scheduled work time from the time of the positive test until the employee returns to work will be charged to suspension without pay.
    - b. The appointing authority may require a negative return-to-duty test before allowing the employee to return to work. If the employee receives a positive alcohol confirmation test as part of return-to-duty or follow-up testing, the employee will be dismissed.
    - c. As a condition of return to work, the appointing authority may also require an employee with a positive alcohol confirmation test result of 0.04 or greater to provide documentation from a Substance Abuse Professional certifying that the employee is fit to perform high-risk work. The employee may also be subject to follow-up testing, as recommended by the Substance Abuse Professional.
    - d. Employees in federally regulated transportation positions will be required to follow the return-to-duty process outlined in State Personnel Board Rule 478-1-.21D.7.C.
- D. Dismissal of Classified Employees
  - 1. When a classified employee is dismissed from employment for refusing testing or for having a positive drug or alcohol test, any adverse action must comply with the provisions of State Personnel Board Rule 478-1-.26, Adverse Action for Classified Employees.

2. When State Personnel Board Rule 478-1.21, requires immediate dismissal, the action will be processed in accordance with Section 11 of State Personnel Board Rule 478-1-.26, Adverse Action for Classified Employees.
  3. 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.
- E. 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.

### **5.08.5 Substance Abuse Testing Refusal**

- A. Individuals will be deemed to have expressly refused testing in the following circumstances:
1. 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;
  2. 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.
  3. An individual who fails to provide adequate urine (or other substance authorized by applicable Federal regulation) for drug testing, unless the MRO finds there was a valid medical reason;
  4. An individual who fails to provide adequate breath or saliva for alcohol testing unless the evaluating physician finds there was a valid medical reason;
  5. If the testing laboratory and the MRO determine that the urine sample of a donor is an adulterated or substituted sample; or
  6. An individual who is found to have brought a clean urine sample or substitute to the collection site or admits to have tampered with his/her specimen.

### **5.08.6 Observed Collection**

- A. Any Limited Appointing Authority may direct a sample to be collected as an observed sample if there is sufficient reason to believe that the donor may attempt to alter or falsify the sample, or as otherwise provided in State Personnel Board Rule 478-1-.21.
- B. Before initiating an observed sample, the respective Limited Appointing Authority should confer with the Director of Human Resources and the Director of Legal Services or their designee.
- C. If approved, all requirements for an observed collection outlined in State Personnel Board Rule 478-1-.21.8 must be followed.
- D. Federally regulated return-to-duty and follow-up test collections will be observed.

## 5.08.7 Types of Testing

### A. Reasonable Suspicion Testing

1. All employees are subject to Reasonable Suspicion testing, when a Commanding Officer or Division Director determines there is a compelling reason to suspect an employee is not free from alcohol or drugs.
2. Supervisors shall follow the established procedures for reasonable suspicion testing and must receive approval from the Commanding Officer, Adjutant, or Division Director when they believe there is a need for testing based on reasonable suspicion. Human Resources will provide guidance, as needed.
3. Any employee who is suspected of driving under the influence in violation of the law while on-duty or while commuting to work will be investigated in accordance with DPS Policy 11.05 – DUI Enforcement.
  1. The decision to conduct a DUI investigation must be made by the employee's Commanding Officer, Adjutant, or Division Director.
  2. A positive result from an alcohol confirmation test will be used for disciplinary action without regard to the ultimate outcome of the DUI investigation.
4. Testing for reasonable suspicion of alcohol while on duty, but not involving the suspicion of criminal DUI must be performed at an approved state vendor facility in accordance with administrative reasonable suspicion procedures.
5. Reasonable Suspicion for non-federally regulated employees may be generated by physical, behavioral, or performance indicators or by other evidence found or reported. Indicators supporting reasonable suspicion include, but are not limited to:
  1. Observation of behavior, appearance, speech, or odor likely to result from alcohol or illegal drug use;
  2. An on-the-job incident, such as a medical emergency, likely attributable to alcohol or illegal drug use by an employee;
  3. 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, or others;
  4. Verifiable information that an employee may not be free from alcohol or illegal drugs at work;
  5. Physical on-the-job evidence of alcohol or illegal drug use by an employee;
  6. Documented deterioration in an employee's job performance likely attributable to alcohol or illegal drug use by the employee;
  7. The result of other scientific test(s) that indicate possible use of alcohol or illegal drugs; or

8. Any other specific, timely and describable action that would give an appointing authority reason to suspect an employee not be free from alcohol and illegal drugs.
6. Reasonable Suspicion testing of any employee in federally regulated transportation positions must meet the guidelines outlined in State Personnel Board Sub-Rule 478-1-.21D(3)(d). Alcohol testing may be conducted only when the employee is scheduled to perform safety-sensitive duties.
7. The appointing authority is to provide the employee a written directive to report immediately for substance abuse testing. The employee must be accompanied by a supervisor and not be permitted to transport her/himself.
8. When a reasonable suspicion drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the appointing authority has the discretion to direct the employee to appear for retesting.
9. Results of the test will be given to the employee, the limited appointing authority of the employee, the Commissioner and the Directors of the Office of Professional Standards, Human Resources Division and Legal Services.

**B. Random Drug and Alcohol Testing**

1. The Department will follow the guidelines for random testing located in State Personnel Board Sub-Rule 478.1.21C (testing of employees in “high risk” positions) and Sub-Rule 478-1-21D(3)(b) (testing of employees in federally regulated transportation positions).
2. Random drug tests are conducted on an unannounced basis on randomly selected employees from pools composed of the positions designated as being high risk and/or federally regulated.
3. Random alcohol tests are only conducted on an unannounced basis on pilots and mechanic positions within the Aviation Division, and federally regulated transportation positions only.
4. Incumbents in federally regulated transportation positions who are selected for random alcohol testing must be tested within two (2) hours before or after performing safety-sensitive transportation functions. The Drug Testing Coordinator will notify applicable supervisors of the specific testing requirements at the time an employee is selected for random alcohol testing. Supervisors should immediately notify the drug testing coordinator if the selected employee is not scheduled to perform safety-sensitive transportation functions within the 30-day period after the effective date specified in the notice.
5. The Drug Testing Coordinator within the Human Resources Division will notify supervisors via email that an employee under their supervision has been selected for a random drug test, and provide the instructions and appropriate forms to notify the employee in writing of his/her selection.
6. Supervisors should serve a directive to report for random substance abuse testing to the employee in person, and as soon as it is administratively possible. Supervisors are prohibited from emailing the written directive to an employee.

7. Supervisors should not provide notification if the supervisor is aware of any potential problem or scheduling conflict for an employee to report for testing as soon as possible.

For example, a supervisor should not provide notification at the end of a work day, and/or immediately before scheduled pass days or approved leave if it is not possible for the employee to report for testing during the remainder of his/her shift. Not all testing facilities are open on Saturday or Sunday.

8. For random drug testing, employees must report for testing no later than the business day after the employee receives the directive to report. For random alcohol testing, employees must report no later than two (2) hours after the employee receives the directive to report.
9. If an employee is on any form of paid or unpaid leave as of the date the supervisor is notified of the employee's selection the supervisor should notify the Drug Testing Coordinator of the leave and the expected return to duty date, if known. The Drug Testing Coordinator will communicate the last possible date the employee can be notified of the current selection. If the employee returns to duty by that date, the supervisor should serve the written notification on the day the employee returns to duty. If the employee does not return by that date, the supervisor must notify the Drug Testing Coordinator.
10. Supervisors are prohibited from providing an employee advanced notice of a random drug or alcohol test selection.

#### C. Pre-Employment Drug Testing

1. Any individual who has been conditionally offered a position requiring P.O.S.T. certification, a position that has been determined to include "high risk" work, or a federally regulated transportation position is subject to pre-employment drug testing. This includes individuals who are temporary, part-time, students, volunteers, etc.
2. No final offer of employment for a P.O.S.T. Certified position can be tendered until the candidate has submitted to drug screening and negative test results have been received.
3. Whenever possible, pre-employment drug testing for all other positions should be completed and a negative result received before employment in the high risk position begins. In no case can the test be conducted more than ten (10) business days after employment in the position begins.

#### D. Post-Accident Drug and/or Alcohol-Testing for Federally Regulated Transportation Positions

1. Any employee performing safety-sensitive duties who is involved in an on-the-job accident as defined by the applicable federal operating administrations is required to undergo substance abuse testing, as ordered as soon as possible and in accordance with applicable federal operating administration. The Department will follow the guidelines for Post-Accident testing located in State Personnel Board rule 478-1-.21.D.3.C.

#### E. Return-to-Duty Testing



1. Any employee who will be allowed to return to work following a positive alcohol confirmation test result of 0.02 or higher in a random or reasonable suspicion test may be required to receive a negative test before allowing the employee to return to work.
2. Any employee who will return to work after self-disclosing a substance abuse problem, must successfully complete alcohol and/or drug testing, whichever is applicable, and obtain a negative result before returning to duty.
2. Federally regulated employees with a previous drug/alcohol free workplace violation must successfully complete drug and/or alcohol testing (whichever applies) as ordered and receive a negative result as a condition of return to duty in a safety-sensitive transportation function. Federal regulations require return-to-duty testing be conducted under direct observation.

F. Follow-up Testing

1. Any individual who returns to work following a positive alcohol confirmation test result of 0.4 or higher in a random or reasonable suspicion test may be subject to follow-up alcohol testing at the recommendation of the treating Substance Abuse Professional.
2. Any individual who returns to work following the self-disclosure of a substance abuse problem is subject to unannounced alcohol or drug testing, whichever is applicable, for up to five (5) years.
3. Follow-up Testing for Federally Regulated Transportation Positions - Following a determination by a Substance Abuse Professional that an employee who has violated an alcohol or drug provision is in need of assistance in resolving problems associated with alcohol or drug abuse, the Appointing Authority will ensure that the employee is subject to unannounced follow-up alcohol and/or drug testing, whichever is applicable. Mandatory follow-up testing will be conducted only when the employee is scheduled to perform safety-sensitive transportation functions. Testing must be conducted at least six times in the first 12 months following return to safety-sensitive transportation functions and may, upon the recommendation of the Substance Abuse Professional, be continued for up to 60 months. Federal regulations require return-to duty testing be conducted under direct observation.

### **5.08.8 Medical Review Officer (MRO) Contact Procedure**

- A. The Medical Review Officer (MRO) will, upon receipt of a positive, adulterated, substituted, or invalid laboratory report, attempt to contact the donor at the phone numbers number indicated on the CCF/drug testing form 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 the 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 the usage 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 is unable to directly contact the donor, he/she will contact the Human Resources Division. The Department will attempt to contact the donor and will inform the donor that he/she must personally contact the MRO as soon as possible and that the MRO may report the test result as positive or as a refusal, as applicable, if not contacted within 72 hours. The Human Resources Division will notify the MRO when the message was delivered to the donor.
5. If the Department is unable to contact the donor within two (2) business days of the initial attempt, the Human Resources Division will notify the MRO. The MRO will then deem the donor to have tested positive or refused testing, as applicable.-
6. The decision of the MRO regarding the verification of a positive, adulterated or substituted drug test result will be final.

### **5.08.9 FMCSA Drug and Alcohol Clearinghouse**

It is required for all federally regulated transportation positions that the following personal information collected and maintained under CFR Title 49 - Part 382 (CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING) shall be reported to the Clearinghouse:

- A. A verified positive, adulterated, or substituted drug test result;
- B. An alcohol confirmation test with a concentration of 0.04 or higher;
- C. A refusal to submit to any test required by subpart C of CFR Title 49 - Part 382;
- D. An employer's report of actual knowledge, as defined at §382.107;
  1. On duty alcohol use pursuant to §382.205;
  2. Pre-duty alcohol use pursuant to §382.207;
  3. Alcohol use following an accident pursuant to §382.209; and
  4. Controlled substance use pursuant to §382.213;
- E. A substance abuse professional (SAP as defined in §40.3 of Title 49) report of the successful completion of the return-to-duty process;
- F. A negative return-to-duty test; and
- G. An employer's report of completion of follow-up testing.

### **5.08.10 Exceptions**

This policy will not limit the Department's responsibility to meet legal requirements, i.e. O.C.G.A. § 40-5-55.