

D.C. OFFICE OF PERSONNEL

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2004-166, dated September 30, 2004; and in accordance with Title II of the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (Act), effective November 30, 2004 (D.C. Act 15-630), and any similar succeeding legislation, hereby gives notice of the adoption of the following emergency rules. The Act requires that criminal background checks be obtained for: (1) persons being considered for employment, or unsupervised voluntary services, with District government agencies that meet the definition of "covered child or youth services provider" in section 202 (3) of the Act; and (2) employees and unsupervised volunteers in District government agencies considered covered child or youth services providers. The Act also requires that traffic record checks be conducted for certain persons being considered for employment, compensated or voluntary, with District government agencies considered covered child or youth services providers; employees and unsupervised volunteers submit to periodic criminal background checks; and rules be issued to implement the provisions of the title. Therefore, to ensure the preservation of the welfare of the public in general, and to ensure the preservation of the welfare of children and youth in particular, action was taken on December 16, 2004 to adopt the following rules on an emergency basis effective December 23, 2004. These emergency rules implement the provisions of the Act by adding a new section 412 to Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations. This rulemaking notice supersedes emergency rulemaking effective October 1, 2004, published at 51 DCR 9724 (October 15, 2004). These rules will remain in effect for up to one hundred twenty (120) days from December 23, 2004, unless earlier superseded by another rulemaking notice.

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2004-166, dated September 30, 2004; and in accordance with Title II of the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (Act), effective November 30, 2004 (D.C. Act 15-630), and any similar succeeding legislation, hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Act requires that criminal background checks be obtained for: (1) persons being considered for employment, or unsupervised voluntary services, with District government agencies that meet the definition of "covered child or youth services provider" in section 202 (3) of the Act; and (2) employees and unsupervised volunteers in District government agencies considered covered child or youth services providers. The Act also requires that traffic record checks be conducted for certain persons being considered for employment, compensated or voluntary, with District government agencies considered covered child or youth services providers; employees and unsupervised volunteers submit to periodic criminal background checks;

and rules be issued to implement the provisions of the title. Accordingly, upon adoption, these rules will implement the provisions of the Act by adding a new section 412 to Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations. Upon adoption, these rules will amend Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), 51 DCR 928 (January 23, 2004), and 51 DCR 11591 (December 24, 2004).

CHAPTER 4

ORGANIZATION FOR PERSONNEL MANAGEMENT

A new section 412 is added to read as follows:

- 412 CRIMINAL BACKGROUND CHECK AND TRAFFIC RECORD CHECK REQUIREMENTS – DISTRICT GOVERNMENT AGENCIES CONSIDERED COVERED CHILD OR YOUTH SERVICES PROVIDERS**
- 412.1 Pursuant to Title II of D.C. Act 15-630, the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (Act), effective November 30, 2004, and any similar succeeding legislation, and as specified in this section, the Mayor and other personnel authorities shall be required to conduct criminal background checks and traffic record checks to investigate certain employees, volunteers, and persons being considered for employment with District government agencies that are “covered child or youth services providers,” as that term is defined in section 202 (3) of the Act and section 499 of this chapter.
- 412.2 Each employee or volunteer described in section 412.9 (c) of this section occupying a covered position shall be required to submit to periodic criminal background checks while employed by, or volunteering at, a District government agency considered a covered child or youth services provider. The provisions for periodic criminal background checks are specified in sections 412.34 through 412.36 of this section.
- 412.3 The following subordinate agencies shall be subject to the criminal background check and traffic record check provisions of the Act, on the basis that these agencies, as a whole or certain components thereof, are considered covered child or youth services providers:
- (a) Department of Human Services;
 - (b) Department of Health;

- (c) Department of Parks and Recreation;
- (d) Fire and Emergency Medical Services Department;
- (e) Metropolitan Police Department;
- (f) State Education Office of the Executive Office of the Mayor;
- (g) Department of Mental Health; and
- (h) Child and Family Services Agency.

- 412.4 Pursuant to section 204 (b) of the Act, traffic record checks shall be conducted on employees and supervised and unsupervised volunteers of District government agencies considered covered child or youth services providers who are, or on appointees who would be, required to drive motor vehicles to transport children and youth in the course of performing their duties. Traffic record checks shall be obtained from the traffic records maintained by the D.C. Department of Motor Vehicles.
- 412.5 Criminal background checks pursuant to the Act, including fingerprinting, shall be conducted in accordance with Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment.
- 412.6 Agencies subordinate to the Mayor that are subject to the Act, and independent District government agencies that are subject to the Act, shall cover the costs for criminal background checks and traffic record checks required under the Act.
- 412.7 The Chief, Metropolitan Police Department (or his or her designee), shall be responsible for conducting criminal background checks under the Act, including fingerprinting, and for developing internal operating procedures to conduct the checks.
- 412.8 Personnel authorities shall be responsible for conducting traffic record checks pursuant to the Act, and for developing internal operating procedures for conducting the checks.
- 412.9 Criminal background checks pursuant to this section shall be required for the following persons:
- (a) Each person being considered for employment with a District government agency considered a covered child or youth services provider, in a position with duties and responsibilities as described in section 412.11 of this section or similar duties and responsibilities;

- (b) Each person being considered for voluntary service in a District government agency considered a covered child or youth services provider, in an unsupervised position with duties and responsibilities as described in section 412.11 of this section or similar duties and responsibilities; and
 - (c) Each employee and unsupervised volunteer with a District government agency considered a covered child or youth services provider, who occupies a position with duties and responsibilities as described in section 412.11 of this section or similar duties and responsibilities.
- 412.10 A volunteer in a District government agency considered a covered child or youth services provider who has only supervised contact with children or youth is not required to submit to a criminal background check; however, if applicable, such person will be required to submit to a traffic record check pursuant to section 204 (b) of the Act.
- 412.11 Upon consulting with the head of a District government agency considered a covered child or youth services provider, the appropriate personnel authority shall identify and determine which positions in the agency shall be covered under the Act. In identifying the covered positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of direct services that affect the health, safety, and welfare of children and youth or services for the benefit of children and youth, including but not limited to, at least one (1) of the following duties and responsibilities:
- (a) Childcare duties;
 - (b) Recreational activities;
 - (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
 - (d) Educational activities;
 - (e) Individual counseling;
 - (f) Group counseling;
 - (g) Assessment, case management and support services;
 - (h) Psychiatric and psychological assessment services;
 - (i) Developmental, speech, and language evaluation services;
 - (j) Diagnostic evaluation and treatment services;

Reasonable suspicion – for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

Reasonable suspicion referral – for the purposes of sections 3901 through 3910 of this chapter, referral of an employee in a safety-sensitive position for testing by the District government for drug or alcohol use.

Safety sensitive position – for the purposes of sections 3901 through 3910 of this chapter, a position with duties and responsibilities that require the incumbent to provide services that affect the health, safety, and welfare of children and youth, including direct care and custody of children and youth, including but not limited to the duties and responsibilities listed in section 3903.1 (a) through (t) of this chapter.

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in section 301 (q) of the CMPA (D.C. Official Code § 1-603.01 (17)) (2001).

Youth – for the purposes of sections 3901 through 3910 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Acting Director, D.C. Office of Personnel, 441 4th Street, NW, Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

- (k) Childhood development services;
- (l) Medical or clinical services;
- (m) Therapeutic services, including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;
- (o) Mentoring services;
- (p) Youth care services;
- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, youth problem-solving; or
- (t) Driving a motor vehicle to transport children and youth.

412.12 The following standards shall be applied in identifying positions, compensated or not, which shall be subject to the criminal background check requirement or the traffic record check requirement under the Act:

- (a) The underlying guiding standard to be applied in identifying positions that shall be subject to the criminal background check requirement and traffic record check requirement shall be one of reasonableness, coupled with the standards outlined in section 412.12 (b) through (k) of this section, as applicable.
- (b) A determination that a position is covered under the Act and subject to the criminal background check requirement shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 412.11 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.
- (c) The single fact that a position is located in a District government agency considered a covered child or youth services provider does not automatically make the position or its incumbent subject to the criminal

background check requirement or the traffic record check requirement of the Act.

- (d) Strictly tangential, casual, or occasional contact with children and youth does not automatically make an employee or volunteer subject to the criminal background check requirement or traffic record check requirement of the Act.
- (e) Administrative, clerical, or technical support positions within the immediate office of the head of a District government agency considered a covered child or youth services provider as well as within other components, units, or divisions of the agency that provide non-operational support services shall not be subject to the criminal background check requirement unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 412.11 of this section or similar duties and responsibilities, related to the direct provision of services to children and youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely. Such positions may include, but are not limited to the head of the agency, special assistants, administrative officers, staff assistants, and secretaries.
- (f) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check upon the personnel action being effected and to periodic criminal background checks while detailed, temporarily promoted, or temporarily reassigned.
- (g) A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check upon being moved to the covered assignment and to periodic criminal background checks while in the covered assignment.
- (h) A determination that a position is subject to the traffic record check requirement under the Act shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties requires that any incumbent of the position drive a motor vehicle to transport children and youth in the course of performing his or her duties.
- (i) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a position that will require him or her to drive a motor vehicle to transport children and youth in the course of performing the duties of the detail, temporary promotion, or

temporary reassignment shall be subject to an initial traffic record check upon the personnel action being effected.

- (j) A volunteer whose assignment changes from non-covered duties and responsibilities to duties and responsibilities that will require him or her to drive a motor vehicle to transport children and youth in the course of performing the duties of the voluntary assignment shall be subject to an initial traffic record check requirement upon being moved to the covered assignment.
- (k) Except as specified in section 412.10 of this section, any position subject to the traffic record check requirement shall also be subject to the criminal background check requirement.

412.13 District government agencies considered covered child or youth services providers may submit information and documentation to the appropriate personnel authority to challenge the designation of a position as subject to a criminal background check or traffic record check. The personnel authority shall evaluate any information and documentation submitted by an agency, and promptly determine whether the original designation shall stand or be changed.

412.14 Vacancy announcements for positions identified and designated as requiring a criminal background check or traffic record check, or both, shall include statements informing each applicant that:

- (a) The position for which he or she is applying has been identified and designated as requiring a criminal background check or traffic record check, or both;
- (b) If tentatively selected for the position, a criminal background check or traffic record check, or both, as appropriate, will be conducted; and
- (c) The employing agency may offer employment to the appointee to the position contingent upon receipt of a satisfactory criminal background check or traffic record check, or both.

412.15 In the case of non-competitive recruitment for a position requiring a criminal background check or traffic record check, or both, the appropriate personnel authority shall inform the person being considered for employment, in writing, of the requirements specified in section 412.14 of this section.

412.16 The Director, D.C. Office of Personnel (or his or her designee), shall publish the list of positions in agencies under the personnel authority of the Mayor that are subject to a criminal background check or traffic record check, or both, in the District Personnel Manual (or any other procedural manual developed). The list shall be published on an annual basis.

- 412.17 An appointee to a compensated position with a District government agency considered a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory criminal background check or traffic record check, or both, and begin working in a supervised setting, prior to receiving the results of the checks, and prior to the employing agency making a determination that the appointee meets the requirements of the Act. Upon making a determination to allow the appointee to begin working prior to receiving the results of the check or checks, the employing agency shall so inform the appropriate personnel authority.
- 412.18 An appointee to an unsupervised volunteer position with a District government agency considered a covered child or youth services provider shall not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check or traffic record check, or both, are received and a determination is made that the appointee meets the requirements of the Act.
- 412.19 Prior to a criminal background check being conducted, the appropriate personnel authority shall inform each appointee, employee, or unsupervised volunteer subject to the check where and when to report for fingerprinting, and provide each appointee, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:
- (a) To authorize the Metropolitan Police Department or other entity, as appropriate, to conduct the criminal background check and confirm that the appointee, employee, or unsupervised volunteer has been informed that the employing agency is authorized to conduct a criminal background check;
 - (b) To affirm that the appointee, employee, or unsupervised volunteer has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or any other state or territory, or for any of the following offenses or their equivalent in another state or territory:
 - (1) Murder, attempted murder, manslaughter or arson;
 - (2) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
 - (3) Burglary;
 - (4) Robbery;
 - (5) Kidnapping;

- (6) Theft, fraud, forgery, extortion, or blackmail;
 - (7) Illegal use or possession of a firearm;
 - (8) Trespass or injury to property;
 - (9) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse;
 - (10) Child abuse or cruelty to children; or
 - (11) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;
- (c) To acknowledge that the appointee, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
 - (d) To acknowledge that the employing agency may choose to deny the appointee employment or an unsupervised volunteer position based on the outcome of the criminal background check;
 - (e) To provide any additional information that is required, such as name, social security number, date of birth, and gender; and
 - (f) To inform the appointee or employee that a false statement on the form or forms may subject them to criminal penalties.
- 412.20 Upon receiving and completing the form or forms specified in section 412.19 of this section, the appointee or employee shall report to the designated location to be fingerprinted.
- 412.21 Upon completing each criminal background check, the designated Metropolitan Police Department representative, or the representative for any other entity conducting the check, shall forward the check to the appropriate employing agency. The employing agency shall forward a copy of the check to the personnel authority upon completing the review and determination process pursuant to sections 412.22 through 412.30 of this section.
- 412.22 District government agencies shall consider a variety of factors in determining an appointee's suitability for employment based on a criminal background check conducted pursuant to this section, but shall not consider arrest records

and juvenile records that are not related to crimes against children and youth. Possession of one (1) or more of the following criminal background characteristics may make the appointee ineligible for employment or unsupervised voluntary service:

- (a) A felony conviction; or
- (b) A serious misdemeanor conviction.

412.23 Except as provided in section 412.24 of this section, the following variables shall be closely considered and evaluated on a case-by-case basis to determine if an appointee subject to a criminal background check shall be ineligible for employment or unsupervised voluntary service:

- (a) The recency of any conviction;
- (b) The age of the appointee at the time of any conviction;
- (c) Any false statements made by the appointee concerning the form or forms described in section 412.19 of this section, or the uncovering of any intentional false statements of material fact or deception or fraud in applying for employment, compensated or not, that would provide a basis for disqualification; and
- (d) The absence or presence of rehabilitation or efforts toward rehabilitation.

412.24 Notwithstanding the factors and variables specified in sections 412.22 and 412.23 of this section, a criminal background check reflecting a conviction or convictions for crimes against children or youth shall result in the disqualification of the appointee subject to the check.

412.25 Records of traffic infractions shall be judged on an individual basis for appointees whose duties would include driving a motor vehicle to transport children or youth as described in the Act. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the appointee ineligible for employment or voluntary service, if the appointee could be required to drive a motor vehicle to transport children and youth in the course of performing his or her duties.

412.26 Based on the outcome of the criminal background check, each employing agency shall determine whether a final offer of appointment should be made or denied or, when the appointee to a compensated position was allowed to begin working in a supervised setting prior to receiving the results of the check, if he or she will be retained or employment will be terminated.

- 412.27 If the determination is to deny the final offer of appointment or terminate employment, the employing agency shall do all of the following:
- (a) Send the appointee a written notification of the determination. The written notification shall inform the appointee of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report, in writing, within ten (10) days of receiving the written notification; and
 - (b) Send the personnel authority a copy of the written notification.
- 412.28 In challenging the results of a criminal background check report, the appointee may present information and documentation to clarify any errors in the report resulting from mistakes in identity, and any mitigating circumstances that may exist concerning the report.
- 412.29 Upon receiving a challenge to a criminal background check report, the appropriate employing agency shall promptly make a determination on the case and inform the appointee of the decision, in writing, with a copy to the personnel authority.
- 412.30 If the determination is that a final offer of appointment should be made to an appointee who did not begin working prior to the employing agency receiving the results of the check, the employing agency shall promptly notify the personnel authority.
- 412.31 Upon receiving the employing agency's determination that a final offer of appointment should be made to an appointee, the appropriate personnel authority shall promptly issue a final offer letter to the appointee.
- 412.32 An appointee under this section who intentionally provides false information that is material to the application in the course of applying for a position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405) (2001).
- 412.33 A volunteer in an unsupervised position may use the same successful criminal background check conducted on him or her for a period of two (2) years when applying for multiple unsupervised volunteer positions, if the volunteer provides a signed affirmation that he or she has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses listed in section 412.19 (b)(1) through (11) of this section, or their equivalent in any other state or territory, since the date of the most recent check.

- 412.34 Periodic criminal background checks for current employees and unsupervised volunteers shall be conducted when:
- (a) Derogatory information about the employee or unsupervised volunteer, of a nature that will impact the employee's or unsupervised volunteer's suitability to continue performing the duties of the covered position, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority; or
 - (b) Information about a criminal offense committed by the employee or unsupervised volunteer, such as the criminal offenses listed in section 412.19 of this section, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority.
- 412.35 An employee who fails a periodic criminal background check may be subject to administrative action up to and including removal. In determining the type of administrative action to be taken, the employing agency shall consider the factors and variables in sections 412.22 and 412.23 of this section as well as any other similar factors and variables, except that a criminal background check reflecting a conviction or convictions for crimes against children or youth shall result in removal. In addition to, or in the place of administrative action, and at the employing agency's discretion, an employee who fails a periodic check may be reassigned to a non-covered position, except that this option shall not be available for an employee whose criminal background check reflects a conviction or convictions for crimes against children or youth.
- 412.36 An unsupervised volunteer who fails a periodic criminal background check may be terminated or moved to another volunteer assignment that does not include the provision of direct services to children and youth. In determining the type of action to be taken, the employing agency shall consider the factors and variables in sections 412.22 and 412.23 of this section as well as any other similar factors and variables, except that a criminal background check reflecting a conviction or convictions for crimes against children or youth shall result in the termination of the voluntary services.
- 412.37 Criminal background check records obtained under this section shall be confidential and shall be for the exclusive purpose of making employment-related determinations under this section. The records shall not be released or otherwise disclosed to any person, except when:
- (a) Required as one component of an application for employment with a District government agency that provides direct services to children and youth;

- (b) Requested by the personnel authority during an official inspection or investigation;
 - (c) Ordered by a court;
 - (d) Authorized by the written consent of the person being investigated; or
 - (e) Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under Chapter 16 of these regulations.
- 412.38 An individual who discloses confidential information in violation of any of the provisions in section 412.37 of this section shall be guilty of a criminal offense and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one hundred eighty (180) days, or both.
- 412.39 Each personnel authority with agencies considered covered child or youth services providers shall prepare compliance reports every six (6) months beginning on the date that these regulations are effective. Each report shall be submitted to the Mayor and shall include:
- (a) The number of criminal background checks and traffic record checks conducted for appointees, the number of appointees who were hired upon completion of the check, and the number rejected; and
 - (b) The number of periodic criminal background checks conducted for employees and unsupervised volunteers, and any administrative action initiated or taken upon completion of the periodic checks.
- 412.40 Each District government agency considered a covered child or youth services provider is required to submit to the Mayor the positions that have been designated as subject to the criminal background check requirements of the Act within thirty (30) days of December 1, 2004. Subsequent to that, agencies shall submit an updated list of the positions subject to the criminal background check requirement on an annual basis by December 1 of every year.

Section 499 is amended to add the following definitions:

499 DEFINITIONS

499.1 When used in this chapter, the following terms have the meaning ascribed:

Applicant – for the purposes of section 412 of this chapter, a person who has filed a written application for employment or resume, or a verbal request, with a District government agency considered a covered child or youth services provider; or a person who has made an affirmative effort through written application, resume or a verbal

request, to serve in an unsupervised volunteer position with a District government agency considered a covered child or youth services provider.

Appointee – for the purposes of section 412 of this chapter, a person who has been made a tentative job offer to a covered position, compensated or voluntary, subject to the satisfactory completion of a criminal background check or traffic record check, or both.

Children – for the purposes of section 412 of this chapter, persons twelve (12) years of age and under.

Covered assignment – for the purposes of section 412 of this chapter, tasks of a volunteer with a District government agency considered a covered child or youth services provider, which require the volunteer to provide direct services that affect the health, safety, and welfare of children and youth, including but not limited to the duties and responsibilities listed in section 412.11 (a) through (t) of this chapter.

Covered child or youth services provider – for the purposes of section 412 of this chapter, any District government agency, or a component of a District government agency such as an office, unit or division, including the agencies listed in section 412.3 of this chapter, that provides direct services that affect the health, safety, and welfare of children and youth, including individual and group counseling, therapy, case management, supervision, or mentoring. These services are provided either directly or for the benefit of children and youth.

Covered duties and responsibilities – for the purposes of section 412 of this chapter, duties and responsibilities of a volunteer in a District government agency considered a covered child or youth services provider, that require the volunteer to provide direct services that affect the health, safety, and welfare of children and youth or services for the benefit of children and youth, including but not limited to the duties and responsibilities listed in section 412.11 of this chapter.

Covered position – for the purposes of section 412 of this chapter, a position, compensated or voluntary, in a District government agency considered a covered child or youth services provider, with duties and responsibilities that would require the employee or volunteer to provide direct services that affect the health, safety, and welfare of children and youth or services for the benefit of children and youth, including but not limited to the duties and responsibilities listed in section 412.11 of this chapter.

Criminal background check – the investigation of a person's criminal history through the record systems of the FBI or Metropolitan Police Department.

Independent agency – any board or commission of the District of Columbia government not subject to the administrative control of the Mayor.

Material – a statement that is capable of influencing, or has a natural tendency to affect, an official decision.

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Non-covered duties and responsibilities – for the purposes of section 412 of this chapter, duties and responsibilities of a volunteer in a District government agency considered a covered child or youth services provider, of such a nature that would not require that the volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

Non-covered position – for the purposes of section 412 of this chapter, a position, compensated or voluntary, in a District government agency considered a child or youth services provider, with duties and responsibilities of such a nature that would not require that the employee or volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

Person being considered for employment – for the purposes of section 412 of this chapter, a person who has been made a tentative offer of employment, compensated or voluntary, to a covered position, subject to the satisfactory completion of a criminal background check or a traffic record check, or both.

Volunteer – for the purposes of section 412 of this chapter, any person who performs work without any monetary or other financial compensation, in a covered position, for a District government agency considered a child or youth services provider.

Youth – for the purposes of section 412 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Acting Director of Personnel, 441 4th Street, N.W., Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title I of the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (Act), effective November 30, 2004 (D.C. Act 15-630), and any similar succeeding legislation, hereby gives notice of the adoption of the following emergency rules. The Act amended the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*) (2001), on an emergency basis, to add a new Subtitle XX-C establishing a "Mandatory Drug and Alcohol Testing Program for Certain Employees Who Serve Children." The Act requires that the following individuals be tested by the District government for drug and alcohol use: (1) an applicant for employment in a safety-sensitive position with the District government; (2) a District government employee in a safety-sensitive position who has had a reasonable suspicion referral; (3) a post-accident District government employee in a safety-sensitive position; (4) a District government employee who is required to drive a motor vehicle to transport children and youth in the course of performing his or her official duties, whenever a supervisor has probable cause or a police officer arrests such employee for a violation of the law and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .08 percent or more, by weight, of alcohol, or while that employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor; and (5) any other District government employee who works in a safety-sensitive position. Therefore, to ensure the preservation of the welfare of the public in general, and to ensure the preservation of the welfare of children and youth in particular, action was taken on December 17, 2004 to adopt the following rules on an emergency basis effective on January 3, 2005. These emergency rules add new sections 3901 through 3910 and 3999 to Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations, for the purpose of implementing the provisions of the Act. The rules also modify section 3900 of the chapter, Drivers of Commercial Motor Vehicles. These rules will remain in effect for up to one hundred twenty (120) days from January 3, 2005, unless earlier superseded by another rulemaking notice.

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title I of the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (Act), effective November 30, 2004 (D.C. Act 15-630), and any similar succeeding legislation, hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Act amended the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*) (2001), on an emergency basis, to add a new Subtitle XX-C establishing a "Mandatory Drug and Alcohol Testing Program for Certain Employees Who Serve Children." The Act requires that the following individuals be tested by the District government for drug and alcohol use: (1) an applicant for employment in a safety-sensitive position with the District government; (2) a District government employee in a

safety-sensitive position who has had a reasonable suspicion referral; (3) a post-accident District government employee in a safety-sensitive position; (4) a District government employee who is required to drive a motor vehicle to transport children and youth in the course of performing his or her official duties, whenever a supervisor has probable cause or a police officer arrests such employee for a violation of the law and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .08 percent or more, by weight, of alcohol, or while that employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor; and (5) any other District government employee who works in a safety-sensitive position. The Act also requires that rules be issued to implement its provisions. Accordingly, these proposed rules would add new sections 3901 through 3910 and 3999 to Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations, for the purpose of implementing the provisions of the Act. These proposed rules would also modify section 3900 of the chapter, Drivers of Commercial Motor Vehicles. Upon adoption, these rules will amend Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations, published at 47 DCR 7931 (September 29, 2000).

CHAPTER 39

TESTING FOR THE PRESENCE OF CONTROLLED SUBSTANCES AND ALCOHOL

Section 3900 is amended to read as follows:

3900 DRIVERS OF COMMERCIAL MOTOR VEHICLES

- 3900.1 Pursuant to section 2011 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-620.11) (2001) and the federal regulations issued pursuant to 49 U.S.C. § 31306 (currently, 49 C.F.R. parts 382-385) shall apply to individuals who are employed, or who are candidates for employment, as drivers of commercial motor vehicles.
- 3900.2 The provisions of section 3900.1 of this section, and the regulations incorporated by reference therein, shall apply to agencies under the personnel authority of the Mayor and other personnel authorities, and to individuals who are employed by or who are candidates for employment in those agencies and personnel authorities as drivers of commercial motor vehicles.

New sections 3901 through 3910 and 3999 are added to read as follows:

3901 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – GENERAL

- 3901.1 Pursuant to Title XX-C of the CMPA, as amended by Title I of the Child and Youth, Safety and Health Omnibus Emergency Act of 2004 (Act), effective November 30, 2004 (D.C. Act 15-630), and any similar succeeding legislation, and as a means of ensuring the health and safety of children and youth, a Mandatory Drug and Alcohol Testing Program for Safety-Sensitive Positions (Program) has been established within the District government. The purpose of the Program is to test certain persons being considered for employment and employees in safety-sensitive positions for illegal drug and alcohol use.
- 3901.2 Implementation of the Act and drug and alcohol testing shall commence as soon as practicable after January 3, 2005.
- 3901.3 The Mayor and other personnel authorities with safety-sensitive positions shall issue a drug and alcohol testing policy in advance of implementation of the Program. Each employee in a safety-sensitive position shall sign an acknowledgment that he or she received a copy of the drug and alcohol testing policy. The drug and alcohol testing policy shall inform employees in safety-sensitive positions of all of the following:
- (a) Circumstances under which an employee will be tested;
 - (b) The procedures to be used for testing; and
 - (c) The consequences of a positive test result.
- 3901.4 Each personnel authority with safety-sensitive positions pursuant to the Act shall contract with a professional testing vendor or vendors to conduct the testing pursuant to the Program, including random testing. The vendor or vendors shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing.
- 3901.5 The Director, D.C. Office of Personnel (or his or her designee), shall develop operating policies and procedures for the Program for agencies subordinate to the Mayor that are subject to the Act. Such operating policies and procedures shall include, but not be limited to, the following:
- (a) The process by which subordinate agencies will forward the names of appointees subject to testing to the Director, D.C. Office of Personnel (or his or her designee);
 - (b) The process by which the database for drug and alcohol testing for employees in safety-sensitive positions in subordinate agencies will be established, maintained, and updated;

- (c) The process by which subordinate agencies will be informed of the results of each test, including random tests; and
- (d) The process for reasonable suspicion referrals.

3901.6 District government agencies with safety-sensitive positions pursuant to the Act shall designate individuals to serve as Medical Review Officers. Among the duties of a Medical Review Officer are to receive all laboratory tests and ensure that an appointee or employee who tests positive is afforded an opportunity to challenge the test in accordance with section 3906.2 of this chapter.

3901.7 The vendor or vendors selected to conduct the testing shall be certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing in accordance with the procedures in 49 C.F.R. part 40.

3901.8 The provisions of the Program are specified in sections 3902 through 3910 of this chapter.

3902 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – APPLICABILITY

3902.1 The following subordinate agencies shall be covered under the Program, on the basis that each one of these agencies, as a whole or certain components thereof, has safety-sensitive positions:

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;
- (d) Fire and Emergency Medical Services Department;
- (e) Metropolitan Police Department;
- (f) State Education Office of the Executive Office of the Mayor;
- (g) Department of Mental Health; and
- (h) Child and Family Services Agency.

3902.2 Pursuant to sections 2032 (a) and 2033 of the CMPA, the following appointees and District government employees shall be subject to drug and alcohol testing:

- (a) An appointee to a safety-sensitive position with a District government agency;

- (b) A District government employee in safety-sensitive position who has had a reasonable suspicion referral;
- (c) A post-accident District government employee in a safety-sensitive position, as soon as reasonably possible after the accident;
- (d) A District government employee who is required to drive a motor vehicle to transport children and youth in the course of performing his or her official duties, whenever a supervisor has probable cause, or a police officer arrests such employee for a violation of the law, and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .08 percent or more, by weight, of alcohol, or while that employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor; and
- (e) Any other District government employee who occupies a safety-sensitive position.

3903 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – STANDARDS FOR THE IDENTIFICATION OF POSITIONS SUBJECT TO DRUG AND ALCOHOL TESTING UNDER THE ACT

3903.1 Upon consulting with the head of a District government agency with safety-sensitive positions, the appropriate personnel authority shall identify and determine which positions in the agency shall be designated safety-sensitive positions subject to mandatory drug and alcohol testing under the Program. In identifying the safety-sensitive positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of services that affect the health, safety, and welfare of children and youth, including direct care and custody of children and youth, including but not limited to at least one (1) of the following duties and responsibilities:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
- (d) Educational activities;
- (e) Individual counseling;

- (f) Group counseling;
- (g) Assessment, case management and support services;
- (h) Psychiatric and psychological assessment services;
- (i) Developmental, speech, and language evaluation services;
- (j) Diagnostic evaluation and treatment services;
- (k) Childhood development services;
- (l) Medical or clinical services;
- (m) Therapeutic services, including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;
- (o) Mentoring services;
- (p) Youth care services;
- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, youth problem-solving; or
- (t) Driving a motor vehicle to transport children and youth.

3903.2 The following standards shall be applied in designating a position as safety-sensitive:

- (a) The underlying guiding standard to be applied in identifying safety-sensitive positions shall be one of reasonableness, coupled with the standards outlined in section 3903.2 (b) through (f) of this section, as applicable.
- (b) A determination that a position is a safety-sensitive position shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 3903.1 of this section or any similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.

- (c) The single fact that a position is located in a District government agency with safety-sensitive positions pursuant to the Act does not automatically make the position or its incumbent subject to testing under the Program.
- (d) Strictly tangential, casual, or occasional contact with children and youth does not automatically make the position safety-sensitive or its incumbent subject to testing under the Program.
- (e) Administrative, clerical, or technical support positions and staff within the immediate office of the head of a District government agency with safety-sensitive positions as well as within other components, units, or divisions of the agency that provide non-operational support services shall not be subject to testing under the Program unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 3903.1 of this section or similar duties and responsibilities and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely. Such positions may include, but are not limited to the head of the agency, special assistants, administrative officers, staff assistants, and secretaries.
- (f) An employee who is detailed, temporarily promoted, or temporarily reassigned from a nonsafety-sensitive position to a safety-sensitive position shall be tested upon the personnel action being effected and, as applicable, shall be subject to testing under the Program while on temporary assignment.

3904 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – NOTIFICATION REQUIREMENTS

- 3904.1 Pursuant to section 2032 (d) of the CMPA, prior to conducting any testing under the Program, District government agencies with safety-sensitive positions shall provide employees an advance written notice of at least thirty (30) days that the District government is implementing the Program.
- 3904.2 Upon receipt of the advance written notice described in section 3904.1 of this section, each employee occupying a safety-sensitive position shall be given one (1) opportunity to seek treatment if he or she acknowledges a drug or alcohol problem. An employee who so acknowledges a drug or alcohol problem shall undergo and complete a counseling and rehabilitation program, and shall not be subject to administrative action while completing the counseling and rehabilitation program; however, the employing agency shall immediately detail the employee to a nonsafety-sensitive position while he or she completes the counseling and rehabilitation program.
- 3904.3 Each employee occupying a safety-sensitive position shall sign an acknowledgment that he or she has been informed of the requirements for alcohol and drug testing.

The original acknowledgment form shall be filed by the agency in a place designated for that purpose and a copy shall be provided to the appropriate personnel authority.

- 3904.4 Position vacancy announcements for positions identified and designated as safety-sensitive shall include a statement informing each applicant that:
- (a) The position for which he or she is applying has been identified and designated as a safety-sensitive position subject to mandatory drug and alcohol testing;
 - (b) If tentatively selected for the position, he or she will be required to submit to testing for illegal drug use prior to appointment, and that appointment to the position will be contingent upon a negative drug test result; and
 - (c) Once hired, he or she shall be subject to mandatory random drug or alcohol testing.
- 3904.5 In the case of non-competitive recruitment for a safety-sensitive position, the appropriate personnel authority shall inform the person being considered for employment of the mandatory testing requirements described in section 3904.4 of this section.
- 3904.6 The position description for each position designated as safety-sensitive shall include a statement of such designation and a statement indicating that incumbents of the position shall be subject to testing for drug and alcohol use.
- 3904.7 The Director, D.C. Office of Personnel (or his or her designee), shall publish the list of safety-sensitive positions in agencies under the personnel authority of the Mayor, in the District Personnel Manual (or any other procedural manual developed). The list shall be updated periodically, as needed.
- 3905 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – TESTING**
- 3905.1 Appointees and District government employees as described in section 3902.2 of this chapter shall be tested for drug and alcohol use as specified in this section and section 3906 of this chapter.
- 3905.2 Testing for drug use shall be conducted by collecting a urine sample from the individual being tested.
- 3905.3 Testing for alcohol use shall be conducted with an evidentiary breath-testing device or EBT, commonly referred to as a breathalyzer.
- 3905.4 A final offer of appointment to a covered position shall not be made until after the results of any test conducted are received and it is determined that the test result is negative.

- 3905.5 Pursuant to section 2032 (b) of the CMPA, and except for a District government employee described in section 3905.6 of this section and section 3908 of this chapter, a District government employee in a safety-sensitive position shall only be subject to random testing.
- 3905.6 Pursuant to section 2033 of the CMPA, an employee in a safety-sensitive position who operates a motor vehicle in the performance of his or her duties shall be tested whenever a supervisor has probable cause, or a police officer arrests the employee for a violation of the law, and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while the employee's breath contains .08 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof, or while the employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.
- 3905.7 An employee who acknowledges a drug or alcohol problem as specified in section 3904.2 of this chapter and who completes a counseling and rehabilitation program for illegal drug use or alcohol abuse shall be tested before being allowed to return to the safety-sensitive position he or she occupied before completion of such a program. After returning to the safety-sensitive position, the employee shall be subject to random testing as specified in sections 3905.5 and 3905.6 of this section, and section 3908 of this chapter, as applicable.

3906 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – TESTING METHODOLOGY

- 3906.1 The vendor or vendors selected to conduct the testing shall, at a location designated by each personnel authority with safety-sensitive positions for such purposes, conduct a breathalyzer test for alcohol use; or collect urine specimens on site for drug testing. In the case of drug testing, the vendor shall split each sample and perform enzyme-multiplied-immunosay technique (EMIT) testing on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor, using the gas chromatography/mass spectrometry (GCMS) methodology; and by the appropriate Medical Review Officer.
- 3906.2 The appropriate personnel authority shall notify, in writing, any appointee or employee in a safety-sensitive position found to have a confirmed positive urinalysis test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method.
- 3906.3 Reasonable suspicion or probable cause and post-accident employee testing shall follow the same procedures set forth in sections 3906.1 and 3906.2 of this section. In the case of a reasonable suspicion referral, as confirmed by a second supervisor, or a post-accident employee, a supervisor shall escort the employee to the vendor's test site for specimen collection or a breathalyzer.

3906.4 In the event that a covered employee may require medical care following an accident, medical care shall not be delayed for the purpose of testing.

3906.5 A breathalyzer test shall be deemed positive if the vendor determines that one (1) milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

3907 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – POSITIVE DRUG AND ALCOHOL TESTS

3907.1 The following shall be grounds for termination of employment:

- (a) A confirmed positive drug test result;
- (b) A positive breathalyzer test;
- (c) Refusal to submit to a drug test or breathalyzer; or
- (d) In the case of an employee who acknowledged a drug and alcohol problem as specified in section 3904.2 of this chapter, failure to complete the counseling and rehabilitation program, or a confirmed positive drug test result for the test conducted upon completion of the counseling and rehabilitation program pursuant to section 3905.7 of this chapter.

3907.2 The appropriate personnel authority shall decline to make a final offer of employment to an appointee as described in section 3902.2 (a) of this chapter when the person:

- (a) Refuses to take the required drug test; or
- (b) Has a confirmed positive drug test result.

3907.3 A person described in section 3907.2 of this section shall not reapply for appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of his or her refusal to take the required drug test or the date of the confirmed positive test result, as applicable.

3907.4 A District government employee who is terminated as specified in section 3907.1 of this section shall be denied subsequent appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of any of the events described in section 3907.1 of this section

3908 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – REASONABLE SUSPICION REFERRALS

3908.1 The immediate supervisor or manager of an employee occupying a safety-sensitive position shall make a reasonable suspicion referral for testing of an employee in a

safety-sensitive position when there is a reasonable suspicion that the employee is under the influence of illegal drugs or alcohol to the extent that the employee is impaired to perform his or her duties.

- 3908.2 Prior to contacting the appropriate personnel authority to make a referral under this section, the supervisor or manager shall:
- (a) Have probable cause or reasonable suspicion that the employee is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired;
 - (b) Gather all information and facts to support this suspicion; and
 - (c) Receive a second opinion from another supervisor or manager.
- 3908.3 A reasonable suspicion referral may be based on direct observation of illegal drug use or possession, physical symptoms of being under the influence of illegal drugs, or intoxicated by alcohol, a pattern of erratic behavior, work performance indicators of drug or alcohol abuse, as well as any other reliable indicators.
- 3908.4 Testing resulting from a reasonable suspicion referral shall be conducted as specified in sections 3905 and 3906 of this chapter.

3909 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – REQUIRED TRAINING

- 3909.1 Agencies with safety-sensitive positions shall be responsible for providing training in drug abuse detection and recognition; documentation; intervention; and any other appropriate topics, for supervisors and managers in agencies with covered employees.

3910 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – RECORD KEEPING AND CONFIDENTIALITY

- 3910.1 All matters relating to test results and applicants for employment and covered employees involved shall be confidential. All records relating to alcohol and drug testing shall be kept by the appropriate personnel authority in a place apart from employment applications or employees' official personnel folders.
- 3910.2 The results of a random test shall not be turned over to any law enforcement agency without the subject's written consent.

3999 DEFINITIONS

- 3999.1 When used in this chapter, the following terms shall have the meaning ascribed:

Alcohol – for the purposes of sections 3901 through 3910 of this chapter, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and

isopropyl alcohol, no matter how it is packaged or in what form the alcohol is stored, utilized or found.

Applicant – for the purposes of sections 3901 through 3910 of this chapter, a person who has filed a resume or written application for District government employment in a safety-sensitive position.

Appointee – for the purposes of sections 3901 through 3910 of this chapter, a person who has been made a tentative offer of appointment with the District government in a safety-sensitive position.

Breathalyzer/Evidential Breath Testing Device (EBT) – for the purposes of sections 3901 through 3910 of this chapter, method for measuring the level of alcohol present in an individual.

Children – for the purposes of sections 3901 through 3910 of this chapter, persons twelve (12) years of age and under.

Days – calendar days, unless otherwise specified.

Drugs – for the purposes of sections 3901 through 3910 of this chapter, illegal drugs for which tests are required under 49 C.F.R. part 40, such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates; but not authorized prescription medications.

Enzyme-Multiplied-Immunoassay Technique (EMIT) – for the purposes of sections 3901 through 3910 of this chapter, initial method that is used to test for drugs in urine samples.

Gas chromatography mass spectrometry (GCMS) methodology – for the purposes of sections 3901 through 3910 of this chapter, the only authorized confirmation-testing method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Personnel authority – a person or entity with the authority to administer all or part of a personnel management program as provided in Title IV of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2001).

Post-accident employee – for the purposes of sections 3901 through 3910 of this chapter, a District government employee in a safety-sensitive position who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

Probable cause – for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

Random testing – for the purposes of sections 3901 through 3910 of this chapter, drug or alcohol testing conducted on a District government employee in a safety-sensitive position at an unspecified time for purposes of determining whether the employee has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.