

PART I
D.C. PERSONNEL REGULATIONS
CHAPTER 39
TESTING FOR THE PRESENCE OF
CONTROLLED SUBSTANCES AND ALCOHOL

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D.C. PERSONNEL REGULATIONS**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), 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.

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

- 3901.1 Pursuant to Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 13-353; D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.), 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 appointees (new hires) into and employees in safety-sensitive positions for illegal drug and alcohol use, and including random, reasonable suspicion, and post-accident testing.
- 3901.2 Each personnel authority with safety-sensitive positions shall contract with a professional testing vendor or vendors to conduct testing under the Program. 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, in accordance with the procedures in 49 C.F.R. Part 40, and District government procedures.
- 3901.3 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.
- 3901.4 District government employees in safety-sensitive positions shall be given written notice that the District government is implementing a drug and alcohol testing

- program for safety-sensitive positions pursuant to D.C. Official Code § 1-620.31 *et seq.*, at least thirty (30) days in advance of implementation of the Program. No employee shall be tested prior to receiving the thirty-day (30-day) initial notification of the Program.
- 3901.5 The Director, D.C. Department of Human Resources (DCHR), shall develop operating policies and procedures for the Program for agencies subordinate to the Mayor that have safety-sensitive positions.
- 3901.6 The provisions of the Program are specified in sections 3902 through 3910 of this chapter.
- 3901.7 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 safety-sensitive 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 into a safety-sensitive position, he or she shall be subject to mandatory random drug or alcohol testing.
- 3901.8 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.
- 3901.9 The Director, DCHR, 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.
- 3902 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: APPLICABILITY**
- 3902.1 Pursuant to D.C. Official Code § 1-620.32 (a) (2006 Repl.), the following appointees and District government employees shall be subject to drug and alcohol testing:
- (a) An appointee (new hire) to a safety-sensitive position with a District government agency;
 - (b) A District government employee in safety-sensitive position who has a reasonable suspicion referral; and

- (c) A post-accident District government employee in a safety-sensitive position, as soon as reasonably possible after the accident.

3902.2 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) Traffic Safety Administration within the District Department of Transportation;
- (g) Office of the State Superintendent of Education;
- (h) Department of Youth Rehabilitation Services;
- (i) Department of Employment Services;
- (j) Department of Mental Health;
- (k) Child and Family Services Agency;
- (l) Department of Disability Services;
- (m) District Department of the Environment, Natural Resources Administration, Fisheries and Wildlife Division, Fisheries Management Branch, Aquatic Resource Education Center;
- (n) D.C. Public Schools; and
- (o) Any other subordinate or independent District government agency subject to these regulations, including an agency which, as a result of a permanent or a temporary change to its mission such as may be caused by reorganization or any other similar reason, come to have safety-sensitive positions.

3902.3 While not listed in section 3902.2 of this section, the provisions of sections 3901 through 3910 of this chapter shall apply to independent agencies covered by this chapter, such as the D.C. Public Library, that have safety-sensitive positions as that term is defined in the Act.

- 3902.4 The D.C. Department of Human Resources may execute a Memorandum of Understanding to conduct drug and alcohol testing under the Act for an independent agency with safety-sensitive positions.

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

- 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 or youth or services for the benefit of children or 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, or youth problem-solving;
- (t) Youth employment services; or
- (u) Driving a motor vehicle to transport children or 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 similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.
- (c) Location in a District government agency with safety-sensitive positions does not automatically make a position or its incumbent subject to testing under the Program.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee 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, and 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 related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely.

- (f) An employee whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to testing under the Program while in the covered temporary assignment.

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

3904.1 Pursuant to D.C. Official Code § 1-620.35 (a) (2006 Repl.), the Mayor and other personnel authorities with safety-sensitive positions shall:

- (a) Issue a drug and alcohol testing policy; and
- (b) Notify employees in safety-sensitive positions at least thirty (30) days in advance of implementing the Program.

3904.2 The drug and alcohol testing policy shall inform employees in safety-sensitive positions of all of the following:

- (a) Which employees will be tested;
- (b) Circumstances under which an employee will be tested;
- (c) The methodology to be used for testing; and
- (d) The consequences of a positive test result.

3904.3 Each employee occupying a safety-sensitive position shall sign an acknowledgment that he or she received the employee notification informing him or her of the requirements for alcohol and drug testing under the Program.

3904.4 Upon acknowledging receipt of the written notification, 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 be allowed to 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 non safety-sensitive position while he or she completes the counseling and rehabilitation program.

3905 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: TESTING

3905.1 Appointees and District government employees subject to testing under the Program shall be tested for drug and alcohol use as specified in this section and section 3906 of this chapter.

- 3905.2 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.
- 3905.3 Pursuant to D.C. Official Code § 1-620.32 (b) (2006 Repl.), District government employees in safety-sensitive positions shall be subject to random testing, unless the employing agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter testing requirements shall apply.
- 3905.4 A District government employee who is required to drive a motor vehicle to transport children or youth in the course of performing his or her official duties shall be deemed to have given his or her consent, subject to the conditions of sections 3901 through 3910 of this chapter, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable 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 the employee's alcohol concentration was 0.08 grams or more per two hundred and ten (210) liters of breath; 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.
- 3905.5 An employee who acknowledges a drug or alcohol problem upon receiving the initial thirty-day (30-day) notification, 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 testing as specified in sections 3905.3 and 3905.4 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 Testing for illegal drug use shall be conducted by collecting a urine sample from the individual being tested.
- 3906.2 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."
- 3906.3 The vendor or vendors selected to conduct the testing shall conduct the breathalyzer test for alcohol use; or collect urine specimens on site for drug testing at a location designated by each personnel authority for such purposes.
- 3906.4 In the case of drug testing, the vendor shall split each sample and perform enzyme-multiplied-immunosorbent assay 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.

- 3906.5 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.
- 3906.6 Probable cause or reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in 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.
- 3906.7 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.
- 3906.8 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, provided that the notification requirements in section 3904 of this chapter have been met:
- (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 3904.4 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 3905.5 of this chapter.
- 3907.2 The appropriate personnel authority shall decline to make a final offer of employment to a safety-sensitive position to an appointee if he or she:
- (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 for any of the events described 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 these events.

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 too 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, or 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 D.C. Official Code § 1-604.01 *et seq.*) (2006 Repl.).

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, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on part of the employee.

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.

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 or youth, including direct care and custody of children or 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)) (2007 Supp.).

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

D.C. Register Updates for Chapter 39 of the D.C. Personnel Regulations, Testing for the Presence of Controlled Substances and Alcohol

The following *D.C. Register* citations identify when a given section(s) of Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations, was amended. Following the publication in the *D.C. Register* of subsequent final rulemaking notices, this Addendum will be updated accordingly.

For the convenience of DPM subscribers, the Addendum identifies amendments on a section-by-section basis; identifies the page(s) in a DPM Transmittal impacted by the amendment(s); and provides brief comments on the amendment(s) accomplished.

<i>D.C. Register</i> Date	Section(s)	Change(s) Reflected on Page(s)	Comments
47 DCR 7931 (9/29/00)	Entire chapter	Entire chapter DPM Transmittal No. 67	The rules replaced the “Reserved” page issued with Transmittal No. 59, dated July 31, 2000, and added Chapter 39 to the D.C. personnel regulations. The entire chapter consisted of section 3900, Drivers of Commercial Motor Vehicles.
52 DCR 6662 (7/15/05)		Sections 3901 through 3910, and 3999 DPM Transmittal No. 135	The rules implemented the provisions of Title I of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005. Title I of the Act amended the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to add a new Subtitle XX-C, <i>Mandatory Drug and Alcohol Testing Program for Certain Employees Who Serve Children</i> . New sections 3901 through 3910 and 3999 were added to the chapter to implement the provisions of the Act.
55 DCR 8871 (8/15/08)	Entire chapter	Sections 3901 through 3910, and 3999 DPM Transmittal No. 175	These rules amended sections 3901 through 3910, and 3999 of the chapter, pertaining to Title I of D.C. Law 15-353, as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33). The amendment pursuant to D.C. Law 16-195 is contained in section 3905.4 of the chapter.

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56 DCR 004354 (6/5/09)	3902.2, 3902.3, 3902.4	Sections 3902.2, 3902.3, 3902.4 E-DPM Transmittal No. 189	These rules amended subsection 3902.2 of the chapter on the subject of covered agencies, to add the District Department of the Environment, Natural Resources Administration, Fisheries and Wildlife Division, Fisheries Management Branch, Aquatic Resource Education Center, to the list of covered agencies for the purpose of drug and alcohol testing for the protection of children and youth pursuant to Title I of D.C. Law 15-353. Additionally, new sections 3902.3 and 3902.4 were added to the chapter.
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