

D.C. PERSONNEL REGULATIONS
CHAPTER 4
SUITABILITY
CONTENTS

| Section | Page |
|---------|---|
| 400 | EMPLOYEE SUITABILITY POLICY 1 |
| 401 | APPLICABILITY 1 |
| 402 | GENERAL SUITABILITY SCREENING 2 |
| 403 | CONDUCTING GENERAL SUITABILITY SCREENING..... 2 |
| 404 | RESERVED 3 |
| 405 | RESERVED 4 |
| 406 | ENHANCED SUITABILITY SCREENING – GENERAL PROVISIONS 4 |
| 407 | ENHANCED SUITABILITY - RECRUITMENT REQUIREMENTS 5 |
| 408 | ASSESSING GENERAL SUITABILITY SCREENING 6 |
| 409 | POSITIONS SUBJECT TO ENHANCED SUITABILITY SCREENING 7 |
| 410 | SAFETY SENSITIVE POSITIONS – GENERAL PROVISIONS 8 |
| 411 | PROTECTION SENSITIVE POSITIONS – GENERAL PROVISIONS 9 |
| 412 | SECURITY SENSITIVE POSITIONS – GENERAL PROVISIONS..... 9 |
| 413 | RESERVED 10 |
| 414 | VOLUNTEERS..... 11 |
| 415 | CRIMINAL BACKGROUND CHECKS – GENERAL PROVISIONS 11 |
| 416 | CRIMINAL BACKGROUND CHECKS – AUTHORIZATION PROCESS 11 |
| 417 | ASSESSING CRIMINAL HISTORIES 13 |
| 418 | RESERVED 14 |
| 419 | TRAFFIC RECORD CHECKS – GENERAL PROVISIONS 14 |
| 420 | TRAFFIC RECORD CHECKS – ASSESSING HISTORIES 15 |
| 421 | RESERVED 15 |

| | | |
|-----|---|----|
| 422 | CONSUMER CREDIT CHECKS – GENERAL PROVISIONS | 15 |
| 423 | CONSUMER CREDIT CHECKS – ASSESSING HISTORIES | 15 |
| 424 | CLARIFYING DEROGATORY INFORMATION | 16 |
| 425 | MANDATORY DRUG AND ALCOHOL TESTING – GENERAL PROVISIONS | 17 |
| 426 | MANDATORY DRUG AND ALCOHOL TESTING – NOTIFICATION REQUIREMENTS | 17 |
| 427 | MANDATORY DRUG AND ALCOHOL TESTING – TESTING METHODOLOGY | 18 |
| 428 | MANDATORY DRUG AND ALCOHOL TESTING – POSITIVE DRUG OR ALCOHOL TESTS RESULTS | 19 |
| 429 | MANDATORY DRUG AND ALCOHOL TESTING – PRE-EMPLOYMENT | 19 |
| 430 | MANDATORY DRUG AND ALCOHOL TESTING – RANDOM..... | 20 |
| 431 | MANDATORY DRUG AND ALCOHOL TESTING – REASONABLE SUSPICION | 20 |
| 432 | MANDATORY DRUG AND ALCOHOL TESTING – POST-ACCIDENT OR INCIDENT | 21 |
| 433 | MANDATORY DRUG AND ALCOHOL TESTING – RETURNED-TO-DUTY AND FOLLOW-UP | 22 |
| 434 | MANDATORY DRUG AND ALCOHOL TESTING – REQUIRED TRAINING | 22 |
| 435 | SUITABILITY DETERMINATIONS | 22 |
| 436 | APPOINTEE, VOLUNTEER, AND EMPLOYEE RIGHTS | 23 |
| 437 | RESERVED | 25 |
| 438 | APPEALS BEFORE THE COMMISSION ON HUMAN RIGHTS..... | 27 |
| 439 | PROGRAM MANAGEMENT | 27 |
| 440 | REPORTING | 27 |
| 441 | CONFIDENTIALITY | 28 |
| 442 | SUITABILITY RECORDS | 29 |
| 443 | DRIVERS OF COMMERCIAL MOTOR VEHICLES | 30 |
| 499 | DEFINITIONS | 30 |
| | ADDENDUM - <i>D.C. REGISTER</i> UPDATES FOR CHAPTER 4 OF THE D.C. PERSONNEL REGULATIONS, ORGANIZATION FOR PERSONNEL MANAGEMENT | 34 |

D.C. PERSONNEL REGULATIONS**400 EMPLOYEE SUITABILITY POLICY**

- 400.1 The District government maintains a highly qualified and diverse workforce comprised of suitable individuals of moral character and dedication who carry out government business in a manner that honors the public trust. These employees are committed to promoting the safety and security of District personnel, residents, visitors, and government property.
- 400.2 It is the policy of the District government to assess the suitability of each applicant, appointee, volunteer, and employee through uniform background checks and drug and alcohol testing, as deemed necessary, which meet the District's need for flexible personnel administration, government accountability, individual privacy, and other constitutionally protected rights.
- 400.3 General background checks, criminal background checks, and mandatory drug and alcohol testing shall be utilized to ensure that each applicant, appointee, volunteer, and employee possesses the character and background necessary to enhance the integrity and efficiency of the District government.
- 400.4 Unless otherwise specified in this chapter, an employee deemed unsuitable pursuant to this chapter, may be reassigned to a non-covered position, for which he or she is qualified and otherwise suitable. If reassignment cannot reasonably be accomplished, is inconsistent with another provision of these regulations, or is determined to not be in the best interests of the agency or the District, the employee shall be subject to immediate removal.

401 APPLICABILITY

- 401.1 Unless otherwise specified, the provisions of this chapter shall apply to all applicants, appointees, volunteers, and employees for positions within the District government agencies under the personnel authority of the Mayor, except for candidates for uniformed positions in the Fire and Emergency Medical Services Department, and candidates and employees in uniformed positions in the Metropolitan Police Department, who shall be covered by suitability provisions in Chapter 8 of these regulations.
- 401.2 Applicants, appointees, volunteers, and employees for positions within the District government under the personnel authority of independent agencies are subject to the provisions of this chapter, unless otherwise specified by law, rules, or regulations.
- 401.3 Negotiated labor agreements shall be read to give effect to this chapter to the fullest extent possible. However, in the case of an irreconcilable conflict, a labor agreement shall control with respect to the specific conflict.

402 GENERAL SUITABILITY SCREENING

402.1 After the issuance of an offer of employment, and to the extent practicable before actual employment commences, all individuals shall undergo a general suitability screening. The personnel authority shall conduct a general suitability screening that includes verification of the following:

- (a) Past employment, including dates, compensation, titles held, duties, performance, and reason for separation;
- (b) Educational background, including all relevant diplomas and degrees;
- (c) Licenses, certifications, and training, required for the position; and
- (d) At least three (3) reference checks to ascertain character, reputation, relevant traits, and other relevant qualities, and whether the individual providing the reference would recommend the applicant for the position for which he or she is being considered. The reference checks shall be made with the individual's former employer; except, that personal references may be utilized instead of, or in addition to, checks with former employers, as deemed necessary by the personnel authority.

402.2 Unless otherwise provided by law, regulation, or Sections 406 through 438, in filling a position subject to a general suitability screening, a screening need not be conducted if the appointee is already employed with the District government in a position subject to a general suitability screening, and the nature of the personnel action for the new appointment is one (1) of the following:

- (a) Promotion;
- (b) Demotion;
- (c) Reassignment; or
- (d) An appointment or conversion of an employee who has been serving continuously with a District government agency for at least one (1) year in a position(s) under an appointment subject to a general background check.

403 CONDUCTING GENERAL SUITABILITY SCREENING

403.1 The personnel authority for each agency shall verify the following information, and shall record the date, time, means, and results of such verification:

- (a) Past employment;

- (b) Residency (if a preference is claimed);
- (c) Military service (if a preference is claimed);
- (d) Education, if required by the position or if used to substitute for experience in qualifying the individual for the position;
- (e) License, certification, or training, if required by the position or if used in qualifying the individual for the position; and
- (f) References.

403.2 Upon completing a general suitability screening in accordance with Subsection 403.1, the personnel authority shall inform the agency of the results, and may make a determination that an appointee is not suitable for employment, and may thereby:

- (a) Deny him or her examination for, or appointment to, the position for which the individual had been considered; or
- (b) Require the employing agency to terminate the appointee from District government service.

403.3 A subordinate agency that has been delegated personnel authority to conduct general suitability screenings shall promptly make an appropriate determination under Subsection 403.2 upon completing the general suitability screening, and immediately inform the program administrator of that determination in writing.

403.4 If any discrepancies, consistent with Section 408, are identified, a subordinate agency that has been delegated personnel authority to conduct general suitability screenings shall investigate to the fullest extent of their ability until the discrepancies are resolved. Individuals under consideration for the positions shall fully cooperate in any such investigation as a prerequisite to employment.

403.5 When a discrepancy cannot be resolved, the discrepancy shall be presented in writing to the personnel authority, who will determine within ten (10) days of receipt of the request, whether the individual is disqualified.

403.6 A general suitability screening shall be deemed valid for a period of one (1) year and need not be repeated by a program administrator for subsequent applications by the same individual for that period of time.

404 [RESERVED]

405 [RESERVED]

406 ENHANCED SUITABILITY SCREENING – GENERAL PROVISIONS

406.1 In addition to a general suitability screening, appointees, volunteers, and employees shall be subject to one (1) or more of the following enhanced suitability screenings, as dictated by the applicable position:

- (a) Pre-employment criminal background check;
- (b) Biennial criminal background check;
- (c) Traffic record check;
- (d) Consumer credit check;
- (e) Pre-employment drug and alcohol test;
- (f) Reasonable suspicion drug and alcohol test;
- (g) Random drug and alcohol test;
- (h) Post-accident or post-incident drug and alcohol test; or
- (i) Return-to-duty and follow-up drug and alcohol test.

406.2 Agencies under the personnel authority of the Mayor shall conform to the standards and procedures established in this chapter for screenings.

406.3 No individual may work in a safety sensitive position until the completion of a negative drug test.

406.4 Each current employee in a covered position shall be subject to an enhanced suitability screening beginning within forty-five (45) days of the publication in the *D.C. Register* of the Notice of Final Rulemaking implementing the criminal background check requirements of this chapter. The personnel authority shall notify each current employee in a covered position that he or she shall be subject to enhanced suitability screening under the chapter prior to conducting any such screening. Employees who occupy safety sensitive positions at the time these rules become final shall be subject to a reasonable suspicion drug and alcohol test, a random drug and alcohol test, post-accident or post-incident drug and alcohol tests, and return-to-duty and follow-up drug and alcohol tests. Employees who

occupy protection sensitive positions at the time these rules become final shall not be subject to an initial drug or alcohol test, but shall be subject to a reasonable suspicion drug and alcohol test, a random drug and alcohol test, post-accident or post-incident drug and alcohol tests, and return-to-duty and follow-up drug and alcohol tests. Employees who occupy security sensitive positions at the time these rules become final shall not be subject to an initial consumer credit check.

- 406.5 The Director of the DCHR (or his or her designee) shall publish in the Electronic-District Personnel Manual (or any other electronic procedural manual or manuals developed) positions in subordinate agencies subject to enhanced suitability screening pursuant to this chapter.
- 406.6 The position description for each position designated for an enhanced suitability screening shall include a statement of such designation and a statement indicating that incumbents of the position shall be subject to enhanced suitability screening.
- 406.7 Agencies subordinate to the Mayor and independent agencies that are subject to these regulations shall cover the full administrative costs of the enhanced suitability screenings listed in Subsection 406.1 of this chapter.
- 406.8 Employees shall not be responsible for the cost of any enhanced suitability screening requirements. Employees shall only be required to participate in suitability assessment activities while on-duty and in a pay status.
- 406.9 Unless otherwise provided pursuant to law or regulation, when an appointee is disqualified under the provisions of this chapter, the program administrator, at its discretion, may continue to rely on that determination with regard to subsequent applications for substantially similar positions with the same enhanced suitability requirements, for a period of not more than one (1) year from the date of the disqualification determination, after which a new suitability screening shall be required.
- 406.10 Upon expiration of the one (1) year period under Subsection 406.9, a new suitability screening shall be conducted and a re-determination made before the individual may be appointed.
- 406.11 Employees separated under Subsection 428.1 and appointees denied continued employment under Subsection 428.2 shall not be eligible for employment in a substantially similar safety sensitive or protection sensitive position for a period of one (1) year from the date of his or her removal or disqualification.

407 ENHANCED SUITABILITY SCREENING – RECRUITMENT REQUIREMENTS

407.1 In the case of competitive recruitment for a position requiring an enhanced suitability screening, the vacancy announcement and subsequent offer letter to the appointee shall state that:

- (a) The position for which he or she is applying has been identified and designated as requiring enhanced suitability screening;
- (b) If tentatively selected for the position, a criminal background check, traffic record check, consumer credit check, and mandatory drug and alcohol testing, as appropriate, will be conducted; and
- (c) The appointee to the position may be offered employment contingent upon receipt of a satisfactory enhanced suitability screening.

407.2 In the case of non-competitive recruitment for a position requiring enhanced suitability screening, the offer letter to the individual being considered for employment shall be provided and contain the information outlined in Subsection 407.1.

407.3 Subject to the approval of the program administrator, an appointee to a covered position may be offered employment contingent upon receipt of a satisfactory enhanced suitability screening. No appointees shall work in an unsupervised setting, prior to receiving the results of the screening, and prior to the employing agency making a determination that the appointee meets the requirements of the chapter.

408 ASSESSING GENERAL SUITABILITY SCREENINGS

408.1 The appropriate authority shall evaluate any derogatory information received during a general suitability screening and determine whether an individual is suitable for the specific position for which he or she has applied. If an individual is found unsuitable, he or she shall be disqualified from appointment to that position.

408.2 The reasons that may be used in making a determination of disqualification of an appointee may include, but shall not be limited to the following:

- (a) Delinquency or misconduct in prior employment;
- (b) Dishonest or other conduct of a nature that could undermine the public's confidence in the District government's integrity;
- (c) Any false statement, or the engagement in deception or fraud in connection with the examination or appointment process;
- (d) Evidence of ongoing abuse of a drug or alcohol; or

(e) Any lawful and articulable reason that is neither arbitrary nor capricious.

408.3 Prior to disqualifying an appointee based on derogatory information, the personnel authority shall determine whether disqualification is warranted. The personnel authority shall make this determination by considering the conduct or event(s) related to the derogatory information in the context of:

- (a) The specific duties and responsibilities of the position;
- (b) The bearing, if any, the derogatory information has on those duties and responsibilities;
- (c) The length of time that has passed since the conduct or event(s);
- (d) The frequency and seriousness of the conduct or event(s);
- (e) Any mitigating information provided by an individual in response to the derogatory information; and
- (f) Whether, based on the totality of information available, the appointee possesses the necessary moral character and dedication to successfully serve the public.

409 POSITIONS SUBJECT TO ENHANCED SUITABILITY SCREENING

409.1 Each agency head (or his or her designee), with the concurrence of the program administrator, shall identify and determine which positions in the agency shall be subject to an enhanced suitability screening. In identifying the covered positions, the program administrator shall ensure that the duties and responsibilities of each position fall into one of the categories described in Subsection 409.2 of this section. The identification of these positions shall be consistent with the spirit of Subsection 400.2 of this chapter.

409.2 The types of positions that are subject to enhanced suitability screenings for appointees, volunteers, and employees are positions with duties and responsibilities that shall be categorized as follows:

- (a) Safety sensitive, which are positions with duties or responsibilities if performed while under the influence of drugs or alcohol could lead to a lapse of attention that could cause actual, immediate and permanent physical injury or loss of life to self or others;
- (b) Protection sensitive, which are positions with duties or responsibilities caring for or ensuring the well-being of children or youth, patients, the elderly, or other vulnerable persons; and

- (c) Security sensitive, which are positions of special trust that may reasonably be expected to affect the access to or control of activities, systems, or resources that are subject to misappropriation, malicious mischief, damage, or loss or impairment of communications or control.

409.3 An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall affirmatively agree to an enhanced suitability screening to the position upon the effective date of the personnel action, and to biennial criminal background and traffic record checks, as appropriate, while detailed, temporarily promoted, or temporarily reassigned to the covered position.

410 SAFETY SENSITIVE POSITIONS – GENERAL PROVISIONS

410.1 In addition to the general suitability screening, individuals applying for or occupying safety sensitive positions are subject to the following checks and tests:

- (a) Criminal background check;
- (b) Traffic record check (as applicable);
- (c) Pre-employment drug and alcohol test;
- (d) Reasonable suspicion drug and alcohol test;
- (e) Post-accident or incident drug and alcohol test;
- (f) Random drug and alcohol test; and
- (g) Return-to-duty or follow-up drug and alcohol test.

410.2 Examples of safety sensitive duties and responsibilities include, but are not limited to:

- (a) Operating large trucks, heavy or power machinery, or mass transit vehicles;
- (b) Handling hazardous quantities of chemical, biological or nuclear materials;
- (c) Maintaining the safety of patrons in and around a pool or aquatic area;

- (d) Engaging in duties directly related to the public safety, including, but not limited to, responding or coordinating responses to emergency events; or
- (e) Carrying a firearm.

411 PROTECTION SENSITIVE POSITIONS – GENERAL PROVISIONS

411.1 In addition to the general suitability screening, individuals applying for or occupying protection sensitive positions are subject to the following checks and tests:

- (a) Criminal background check;
- (b) Traffic record check (as applicable);
- (c) Pre-employment drug and alcohol test;
- (d) Reasonable suspicion drug and alcohol test;
- (e) Post-accident or incident drug and alcohol test; and
- (f) Return-to-duty and follow-up drug and alcohol test.

411.2 Examples of protection sensitive duties and responsibilities include, but are not limited to, positions that:

- (a) Coordinate, develop, or support recreational activities;
- (b) Manage, plan, direct, or coordinate educational activities;
- (c) Perform tasks involving individual or group counseling; or
- (d) Assess, monitor, or support childcare activities.

412 SECURITY SENSITIVE POSITIONS – GENERAL PROVISIONS

412.1 In addition to the general suitability screening, individuals applying for or occupying positions deemed security sensitive are subject to the following checks and tests:

- (a) Criminal background check;
- (b) Traffic record check (as applicable);
- (c) Consumer credit check (as applicable);
- (d) Reasonable suspicion drug and alcohol test; and

- (e) Post-accident or incident drug and alcohol test.

412.2 Examples of security sensitive duties and responsibilities include, but are not limited to, positions that:

- (a) Handle currency;
- (b) Have the ability to create, delete, or alter the financial, personnel, payroll, or related transactions of another person;
- (c) Have routine access to the personal identifying information of others;
- (d) Have routine access to master building keys or controls;
- (e) Have the ability to create, delete, or alter any form of credentials, including, but not limited to, computer network credentials and any form of government identification;
- (f) Have involvement in or access to homeland security and emergency management plans, after action reports, analytical products, hazard analyses, and/or risk assessments that relate to preparedness, response, mitigation, protection of critical infrastructure and key assets, or the protection of data related to persons and/or property before, during, and after an act of terrorism, manmade or natural disaster, or emergency event;
- (g) Have access to networks, files, or drives that include classified, law enforcement sensitive, or for official use only information related to federal or District government terrorism investigations or other man-made disasters in either electronic or hard copy;
- (h) Are in the Executive Service; and
- (i) Are in the Excepted Service.

412.3 Positions located in secure facilities may be deemed security sensitive at the discretion of the personnel authority.

413 [RESERVED]

414 VOLUNTEERS

- 414.1 Individuals providing voluntary services to the District government shall be subject to general and enhanced suitability screening, specified in Sections 402 and 406, as applicable.
- 414.2 Individuals providing voluntary services performing duties and responsibilities in a covered position shall be subject to enhanced suitability screening.
- 414.3 Before a volunteer signs an agreement to perform in a covered position, he or she shall be notified in writing of the enhanced suitability screening before beginning volunteer activities and shall be subject to ongoing enhanced suitability screening while performing the duties and responsibilities of the covered position.
- 414.4 As a condition of an agreement for voluntary service, each individual subject to an enhanced suitability screening shall execute an acknowledgement and consent to the screening required by this chapter.

415 CRIMINAL BACKGROUND CHECKS – GENERAL PROVISIONS

- 415.1 The program administrator shall conduct any required criminal background checks.
- 415.2 Appointees, employees, or volunteers subject to criminal background checks shall submit to a criminal background check by means including, but not limited to, fingerprint and a National Criminal Information Center check.
- 415.3 Initial criminal background checks shall be conducted for appointees to covered positions pursuant to Subsection 406.1. For employees and volunteers in covered positions, a criminal background check shall be conducted on a biennial basis or whenever there is reasonable suspicion that the employee or volunteer has been arrested or charged with a criminal offense listed in Subsection 416.2(c).
- 415.4 Criminal background checks shall be conducted in accordance with the Metropolitan Police Department (MPD) and Federal Bureau of Investigations (FBI) policies and procedures and in an FBI-approved environment.
- 415.5 An individual with proof of an active federal security clearance shall not be subject to a criminal background check.

416 CRIMINAL BACKGROUND CHECKS – AUTHORIZATION PROCESS

- 416.1 As a condition of employment, each individual subject to a criminal background check shall execute an acknowledgement and consent to the criminal background checks required by this chapter.

- 416.2 Prior to each criminal background check, the program administrator shall inform each individual subject to the check of the location of the office where the check will be conducted, when to report for the check, and provide each individual with all forms necessary to:
- (a) Authorize the MPD or another 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) Complete a signed affirmation stating whether the individual:
 - (1) For the offenses listed in subparagraphs (c)(1) through (c)(9), has been convicted, pleaded *nolo contendere*, placed on probation before judgment, or placed on a stet docket; or
 - (2) Has been found not guilty by reason of insanity for any sexual offenses or intra-family offenses.
 - (c) Disclose any court actions for an individual for whom a criminal background check is required, excluding acquittals or dismissals resulting from inadequate evidence, involving, but not limited to, the following criminal conduct:
 - (1) Murder, attempted murder, manslaughter, or arson;
 - (2) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, threats to do bodily harm, including domestic violence;
 - (3) Burglary;
 - (4) Robbery;
 - (5) Kidnapping;
 - (6) Illegal use or possession of a firearm;
 - (7) Sex offenses, including, but not limited to, indecent exposure, promoting, procuring, compelling, soliciting, or engaging in prostitution, corrupting minors (sexual relations with children), molesting, voyeurism, committing sexual acts in public, incest, rape, sexual assault, sexual battery, or sexual abuse, but excluding sodomy between consenting adults;
 - (8) Child abuse or cruelty to children;

- (9) Unlawful distribution or possession of or with intent to distribute an illegal drug;
 - (10) Fraud;
 - (11) Identity theft;
 - (12) Embezzlement; or
 - (13) Computer/cybercrime.
- (d) Acknowledge, in writing, that the individual 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;
 - (e) Acknowledge that the individual may be denied employment, or terminated, based on the outcome of the criminal background check;
 - (f) Provide any additional identification that is required, such as name, social security number, date of birth, and gender; and
 - (g) Inform the individual that a false statement on the form(s) may subject him or her to criminal penalties.

416.3 Upon receiving and completing the form(s) specified in this section, an individual shall report to the designated location to be fingerprinted.

416.4 Volunteers or employees in a covered position shall notify their supervisor and the personnel authority whenever they are arrested or charged with any criminal offense. Such notification shall occur within no more than seven (7) days of the arrest or service of a criminal complaint, or its equivalent, on the volunteer or employee. Failure to comply with this subsection shall constitute cause for disciplinary action under Chapter 16 of these regulations.

417 ASSESSING CRIMINAL HISTORIES

417.1 The program administrator shall evaluate any derogatory information obtained from a criminal background check and determine whether the individual is suitable for the position he or she occupies or for which he or she has applied.

417.2 Upon receipt, the program administrator shall review the criminal history of the individual.

417.3 All criminal convictions shall be considered when assessing suitability based on a criminal history.

- 417.4 The program administrator must evaluate an individual's criminal history to determine whether he or she is suitable for District service. To make this determination, the program administrator shall consider each criminal offense in the context of:
- (a) The specific duties and responsibilities of the position;
 - (b) The bearing, if any, the derogatory information has to those duties and responsibilities;
 - (c) The length of time that has passed since the criminal offense(s);
 - (d) The age of the individual at the time of the criminal offense(s);
 - (e) The frequency and seriousness of the criminal offense(s);
 - (f) Any mitigating information provided by the individual in response to the derogatory information;
 - (g) The contributing social or environmental conditions; and
 - (h) The District's policy favoring re-entry of ex-offenders into its work force.

- 417.5 Notwithstanding any other provision of this chapter, no individual may occupy a safety or protection sensitive position if he or she has been charged with any felony sexual offense(s) or any sexual offense(s) involving minors, and for such offense(s):

- (a) Was convicted, pleaded guilty, pleaded *nolo contendere*, placed on probation before judgment, or otherwise placed on a stet docket;
- (b) Was found not guilty by reason of insanity; or
- (c) Is currently listed on a sexual offender registry.

418 [RESERVED]

419 TRAFFIC RECORD CHECKS – GENERAL PROVISIONS

- 419.1 As a condition of employment, each individual subject to a traffic record check shall execute an acknowledgement and consent to the checks required by this chapter.

- 419.2 The program administrator shall be responsible for conducting traffic record checks pursuant to the provisions in this chapter, and for developing internal operating procedures for conducting the checks.

419.3 For the purposes of this chapter, traffic record checks shall be obtained from the traffic records maintained by the individual's local motor vehicle administration.

420 TRAFFIC RECORD CHECKS – ASSESSING HISTORIES

420.1 The program administrator shall evaluate any derogatory information obtained from a traffic record check and determine whether the individual is suitable for the position he or she occupies or for which he or she has applied.

420.2 The assessment of traffic records shall be conducted substantially consistent with Subsection 417.4.

420.3 The review of the traffic records shall include, but is not limited to:

- (a) Checking the validity of an individual's driver's license;
- (b) Checking for a pattern(s) of disregard for existing traffic regulations; and
- (c) Checking whether there have been any conviction(s) for driving under the influence or while impaired.

421 [RESERVED]

422 CONSUMER CREDIT CHECKS – GENERAL PROVISIONS

422.1 Consumer credit checks shall be conducted for appointees to finance related security sensitive positions.

422.2 Prior to conducting a consumer credit check, and as a condition of employment, an appointee subject to the check shall execute an authorization to obtain a consumer credit report which shall set forth the appointee's or employee's rights under the Fair Credit Reporting Act.

422.3 If any discrepancies are identified, the personnel authority shall fully investigate until the discrepancies are resolved. An appointee shall fully cooperate in any such investigation as a prerequisite to employment.

423 CONSUMER CREDIT CHECKS – ASSESSING HISTORIES

423.1 The program administrator shall evaluate any derogatory information obtained from a credit report and determine whether the individual is suitable for the position he or she occupies or for which he or she has applied.

423.2 When warranted, an appointee may be disqualified based on one (1) or more of the following:

- (a) Debts owed to the District government;
- (b) Active liens;
- (c) Current or repeated exhaustion of credit;
- (d) Bankruptcies and foreclosures; or
- (e) A pattern of late fees or financial activity establishing significant financial stress.

423.3 Prior to disqualifying an appointee based on derogatory credit information, the program administrator shall determine whether disqualification is warranted. To the extent practicable, the program administrator shall make this determination by considering the financial history in the context of:

- (a) The specific duties and responsibilities related to the position;
- (b) The bearing, if any, the derogatory information has to those duties and responsibilities;
- (c) The length of time that has passed since the reporting of the derogatory information;
- (d) The frequency and seriousness of the derogatory information;
- (e) Any mitigating information provided by the individual in response to the derogatory information; and
- (f) Whether, based on the totality of information available, the individual can reasonably be entrusted with the safety and security of government property and operations and possesses the necessary moral character and dedication to successfully serve the public.

424 CLARIFYING DEROGATORY INFORMATION

424.1 Whenever a general and enhanced suitability screening reveals derogatory information the program administrator shall:

- (a) Notify the individual as to the source, nature, and potential impact of the derogatory information; and
- (b) Allow the individual no less than ten (10) business days and no more than twenty-one (21) calendar days to provide a written response to the derogatory information. The personnel authority may authorize a shorter time period under extraordinary circumstances.

425 MANDATORY DRUG AND ALCOHOL TESTING – GENERAL PROVISIONS

- 425.1 Each program administrator with safety or protection sensitive positions shall contract with a professional testing vendor(s) to conduct required drug and alcohol testing. The vendor(s) 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 Code of Federal Regulations (C.F.R.) Part 40, and District government procedures, as applicable.
- 425.2 The vendor(s) selected to conduct the testing shall ensure that any laboratory used is certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing.
- 425.3 The Director of the DCHR shall develop operating policies and procedures for implementing the drug and alcohol program (Program) under this chapter for agencies subordinate to the Mayor that have safety, protection, or security sensitive positions.

426 MANDATORY DRUG AND ALCOHOL TESTING – NOTIFICATION REQUIREMENTS

- 426.1 Each appointee or employee in a covered position shall be provided a copy of the District's drug and alcohol policy, and any additional requirements imposed by his or her respective agency. The policy shall state at a minimum the following:
- (a) The circumstances under which an appointee or employee will be tested;
 - (b) The basic methodology to be used for testing; and
 - (c) The consequences of a positive test result.
- 426.2 Each appointee or employee in a covered position shall sign an acknowledgement that he or she received the written policy as specified in Subsection 426.1 of this section. A legal guardian's signature is needed if the appointee or employee is under eighteen (18) years of age.
- 426.3 As a condition of employment, each appointee or employee in a safety sensitive position subject to random drug and alcohol testing shall execute consent to the testing required by this chapter, or face immediate separation from the District government.

- 426.4 Whenever an employee occupies a position that becomes designated as safety sensitive he or she may self-report any existing drug or alcohol usage to his or her agency within thirty (30) days of the change in designation. The employee shall:
- (a) Be permitted to engage in any needed counseling or rehabilitation program(s), without being subject to adverse or other administrative actions;
 - (b) Be detailed to a position that is not safety or protection sensitive while undergoing the treatment; and
 - (c) Be returned to a safety or protection sensitive position upon successful completion of treatment, and a negative test result.

427 MANDATORY DRUG AND ALCOHOL TESTING – TESTING METHODOLOGY

- 427.1 The vendor(s) selected to conduct the testing shall conduct the alcohol and drug testing at a location designated by the program administrator for such purposes.
- 427.2 In general, testing for drugs shall be conducted by urine sample from the individual being tested.
- 427.3 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a “breathalyzer.”
- 427.4 In the case of drug testing, the vendor(s) shall split each sample and ensure that the laboratory performs enzyme-multiplied-immunoassay technique (EMIT) test on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor(s) using the gas chromatography/mass spectrometry (GCMS) methodology.
- 427.5 The personnel authority shall notify, in writing, any appointee or employee found to have a confirmed positive drug 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 methodology.
- 427.6 All drug and alcohol testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral or a post-accident and incident test, the agency shall escort the employee to the designated test site for specimen collection as needed.
- 427.7 In the event that an individual requires medical care following an accident or incident, medical care shall not be delayed for the purpose of testing. In such cases, drug and alcohol testing may be conducted by a blood test.

427.8 A blood, breath, or urine test conducted in accordance with this section shall be deemed positive if the test yields a result that the appointee's or employee's alcohol content was either .04 grams or more per 210 liters of breath, .04 grams or more per 100 milliliters of blood, or .05 grams or more per 100 milliliters of urine.

427.9 The personnel authority may not require blood tests to be performed to carry out random drug or alcohol tests.

428 MANDATORY DRUG AND ALCOHOL TESTING – POSITIVE DRUG OR ALCOHOL TESTS RESULTS

428.1 An employee shall be deemed unsuitable and immediately subject to separation from a covered position as described in Subsections 439.3 and 439.4 for:

- (a) A positive drug or alcohol test result;
- (b) A refusal to submit to a drug or alcohol test; or
- (c) In the case of an employee who acknowledged a drug or alcohol problem as specified in Subsection 426.4, failure to complete a counseling or rehabilitation program(s), or a positive return-to-duty test.

428.2 The program administrator shall rescind a conditional offer or decline to make a final offer of employment to an appointee subject to pre-employment testing if he or she:

- (a) Fails or otherwise refuses to submit to a required drug or alcohol test;
- (b) Fails or otherwise refuses to follow instructions given during a required drug or alcohol test; or
- (c) Has a positive drug or alcohol test result.

429 MANDATORY DRUG AND ALCOHOL TESTING – PRE-EMPLOYMENT

429.1 As a condition of employment, appointees to safety and protection sensitive positions shall be required to pass a pre-employment drug test in accordance with this section. In addition, the program administrator may require a pre-employment alcohol test.

429.2 For safety and protection sensitive positions, pre-employment drug and alcohol testing shall be conducted after a conditional offer of employment is made, but before the appointee's effective date of appointment.

429.3 Pre-employment drug and alcohol testing shall be carried out pursuant to Sections 425 through 428.

429 MANDATORY DRUG AND ALCOHOL TESTING — RANDOM

430.1 Employees in safety sensitive positions shall be subject to random drug and alcohol testing. Such employees shall be placed in a random drug and alcohol testing pool.

430.2 Each year, the program administrator shall conduct a number of random drug tests that shall be at least equal to fifty percent (50%) of the total drug testing pool.

430.3 Similarly, each year, the program administrator shall conduct a number of alcohol tests that shall be at least equal to ten percent (10%) of the total alcohol testing pool.

430.4 Employees in the drug and alcohol pools shall be randomly selected in a manner consistent with accepted industry practice.

430.5 Random drug and alcohol testing shall be conducted in accordance with Sections 425 through 428.

431 MANDATORY DRUG AND ALCOHOL TESTING — REASONABLE SUSPICION

431.1 All District employees, including employees in independent agencies, are subject to, and shall be referred by a trained supervisor or manager for, drug and alcohol testing when there is a reasonable suspicion that the employee, while on duty, is impaired or otherwise under the influence of a drug or alcohol.

431.2 Prior to contacting the appropriate personnel authority to make a referral under this section, the trained supervisor or manager shall:

(a) Have 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; and

(b) Gather all information and facts to support this reasonable suspicion.

431.3 A reasonable suspicion referral shall be confirmed through a second opinion rendered by another trained supervisor or manager, if available.

431.4 A reasonable suspicion referral may be based on direct observation of drug use or possession, physical symptoms of being under the influence of drugs, symptoms suggesting alcohol intoxication, a pattern of erratic behavior, or any other reliable indicators. There may be reasonable suspicion under the following conditions:

- 431.5 Reasonable suspicion may be established if:
- (a) The employee is witnessed using a drug or alcohol while on duty;
 - (b) The employee displays physical symptoms consistent with drug or alcohol usage;
 - (c) The employee engages in erratic or atypical behavior of a type that is consistent with drug or alcohol usage; or
 - (d) There are other articulable circumstances which would lead a reasonable person to believe that the employee is under the influence of a drug or alcohol.
- 431.6 Only a trained supervisor or manager shall refer an employee for drug or alcohol testing.
- 431.7 Prior to making a referral, the trained supervisor or manager shall gather all information and facts that support the reasonable suspicion determination.
- 431.8 Reasonable suspicion referral testing shall be conducted in accordance with Sections 425 and 427 of this chapter.
- 431.9 Testing resulting from a reasonable suspicion referral shall be conducted as specified in Sections 427 and 428 of this chapter.
- 432 MANDATORY DRUG AND ALCOHOL TESTING — POST-ACCIDENT OR INCIDENT**
- 432.1 All District employees shall be subject to post-accident or incident testing when they are involved in accidents or incidents under the following conditions:
- (a) The employee is involved in an on-the-job accident or incident that result in injury or loss of human life;
 - (b) One (1) or more motor vehicle(s) (either District government or private) incurs disabling damage, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle;
 - (c) Anyone receives bodily injury which requires immediate medical attention away from the scene;
 - (d) The employee operating a government vehicle or equipment receives a citation under District of Columbia or another law for a moving traffic violation arising from the incident;

- (e) There are reasonable grounds to believe the employee has been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .04 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof;
- (f) The actions of the employee cannot reasonably be discounted as a contributing factor, using the best information available at the time of the decision; or
- (g) The employee is involved in an on-the-job accident or incident that seriously damages machinery, equipment, or other property.

432.2 A post-accident or incident drug or alcohol test shall be conducted as set forth in Sections 425 and 427.

433 MANDATORY DRUG AND ALCOHOL TESTING – RETURNED-TO-DUTY AND FOLLOW-UP

433.1 Employees in a safety or protective sensitive position who acknowledge a drug or alcohol problem and complete a counseling and rehabilitation program, as provided in Subsection 426.4, shall be subject to a returned-to-duty and follow-up test.

433.2 The returned-to-duty and follow-up test shall be conducted as set forth in Sections 425 and 427.

434 MANDATORY DRUG AND ALCOHOL TESTING – REQUIRED TRAINING

434.1 Agencies with positions subject to mandatory drug and alcohol testing 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.

435 SUITABILITY DETERMINATIONS

435.1 The information contained in this section shall only apply to enhanced suitability screenings.

435.2 The program administrator shall establish and maintain written suitability assessment determinations for enhanced suitability screenings.

435.3 The program administrator shall make a suitability determination within fifteen (15) days after receiving all enhanced suitability screening information necessary to make the determination.

- 435.4 The final suitability determination shall establish whether:
- (a) For appointees, if a conditional offer of employment should be withdrawn;
 - (b) For volunteers, if the individual is suitable to provide voluntary services; and
 - (c) For employees, if the individual may be retained in their position of record.
- 435.5 For appointees to and employees in safety sensitive positions in a covered child or youth service agency, as defined by D.C. Official Code § 4-1501.02(3) (2012 Repl.), the final suitability determination shall establish whether the appointee or employee presents a present danger to children or youth.
- 435.6 In accordance with Section 428, a positive drug or alcohol test shall render an individual unsuitable for District employment and constitute cause for purposes of Chapter 16 of these regulations.
- 435.7 The program administrator shall notify the employing agency of the final suitability determination.
- 435.8 If an appointee is deemed unsuitable based on an enhanced suitability screening, any conditional employment offer shall be withdrawn and he or she shall be notified of the final suitability determination.
- 435.9 If an employee is deemed unsuitable, the employing agency shall move the employee to a non-covered position, or if none are available, terminate his or her employment by immediately initiating the appropriate adverse action procedure as specified in this subtitle or any applicable collective bargaining agreement. Notwithstanding any other provision of this subtitle, whenever an employee is deemed unsuitable under this chapter, the facts supporting that determination shall be cause for adverse action under Chapter 16 of these regulations.
- 435.10 If a volunteer is deemed unsuitable for voluntary service, the voluntary service process shall be terminated and he or she shall be notified of the suitability determination.
- 435.11 Post-accident and incident drug or alcohol testing results shall be provided to the Chief Risk Officer, Office of Risk Management, for purposes of the Public Sector's Workers Compensation Program, upon request.

436 APPOINTEE, VOLUNTEER, AND EMPLOYEE RIGHTS

- 436.1 In the interest of transparency, applicants, appointees, volunteers, and employees have a right to understand and challenge the sources of derogatory information that results in employment disqualification. The purpose of this section is to

outline the means by which applicants, volunteers, and employees may review, and in some cases appeal, unfavorable suitability determinations based on such information.

436.2 Individuals subject to the provisions of this chapter have the right to the following information:

- (a) Each appointee, volunteer, or employee in a covered position has a right to receive the following information:
 - (1) Copies of public criminal records received from any law enforcement agency pursuant to Section 415 of this chapter;
 - (2) Any traffic records obtained from the individual's local motor vehicle administration pursuant to Section 420 of this chapter; and
 - (3) A consumer credit report obtained pursuant to Section 423 of this chapter.
- (b) The information outlined in Subsection 436.2(a), shall be provided as follows:
 - (1) An applicant, volunteer, or employee must file a written request with the DCHR;
 - (2) The written request must be submitted no more than fifteen (15) days after receipt of a notification that the applicant, volunteer, or employee has been disqualified; and
 - (3) The DCHR shall provide the requested records no more than fifteen (15) days after receipt of the request.
- (c) Employees subject to the provisions of this chapter have a right to review records according to the procedures established in Chapters 4 and 31A of the District Personnel Manual.

436.3 Appointees, volunteers, and employees subject to enhanced suitability screening as outlined in Section 406, may file an appeal based on the provisions of this chapter as follows:

- (a) If an appointee or volunteer is found unsuitable because he or she presents a present danger to children or youth, he or she may appeal that determination to the Commission on Human Rights (Commission). Any such appeal must be submitted to the Commission no more than thirty (30) days following the date of the suitability determination; or

- (b) If an employee is deemed unsuitable and separated from employment, he or she may appeal that determination with the Office of Employee Appeals (OEA) or, if applicable, initiate a grievance pursuant to a collective bargaining agreement or Chapter 16 of these regulations. An appeal to the OEA must be filed with that office no more than thirty (30) days following the date of a final agency decision terminating employment. Employees may not appeal to the Commission.

436.4 An appointee or volunteer that is deemed unsuitable and cannot appeal to the Commission may, if applicable, file a grievance with the personnel authority regarding his or her application for employment pursuant to Chapter 16 of these regulations.

437 [RESERVED]

438 APPEALS BEFORE THE COMMISSION ON HUMAN RIGHTS

438.1 The purpose of this section is to promulgate rules and procedures for the efficient and uniform administration of suitability determination appeals before the Commission.

438.2 If an applicant or volunteer applying for a protection sensitive position is found to pose a present danger to a child or youth, as provided by D.C. Official Code § 4-1501.05a (2012 Repl.), and deemed unsuitable for a District government position, he or she may seek review of that determination with the Commission in accordance with this section.

438.3 For purposes of this section:

- (a) The term “applicant” means an applicant or appointee, as those terms are defined in Section 499;
- (b) The term “petitioner” means the applicant or volunteer seeking review of a suitability determination made under this chapter, but excludes District government employees;
- (c) The term “agency” means the agency to which the applicant applied; and
- (d) The term “parties” means the petitioner and agency, collectively.

438.4 Any document filed with the Commission pursuant to this section shall be served on the opposing party and accompanied by a signed certificate of service showing compliance with this subsection.

438.5 Documents served on the agency shall be delivered by hand or certified mail to the General Counsel for the DCHR or to the General Counsel of the independent personnel authority.

- 438.6 To initiate the review process, the petitioner shall file a Notice of Appeal, along with a copy of the suitability determination being appealed, with the District of Columbia Office of Human Rights within thirty (30) days of the issuance of the agency decision being appealed.
- 438.7 Each Notice of Appeal shall contain, at a minimum, the following information:
- (a) The petitioner's name, address, and phone number;
 - (b) The name of the agency, address, and phone number;
 - (c) The specific objection(s) to the suitability determination;
 - (d) The argument(s) in support of the petitioner's appeal; and
 - (e) The relief being sought.
- 438.8 The following procedures shall be followed after a Notice of Appeal is filed:
- (a) No more than thirty (30) days from the filing of the Notice of Appeal, the agency shall file an answer along with a certified copy of the record, which includes all documents relating to the applicable suitability determination;
 - (b) The agency record shall be indexed, with each page being sequentially numbered;
 - (c) The Commission shall review the respective arguments of the parties along with the agency record;
 - (d) No more than thirty (30) days following the filing of the agency's answer and record, the Commission shall issue a decision affirming or reversing the suitability determination;
 - (e) The Commission shall base its decision exclusively on the Notice of Appeal, and the agency's answer and record, and shall not set aside the suitability determination if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law;
 - (f) When the Commission disagrees with a suitability determination it may make recommendations to the personnel authority. Upon review of the Commission's decision, the personnel authority shall consider the recommendations and issue a final decision without further appeal to the Commission or any court. This final decision by the DCHR or the

independent personnel authority shall be in writing, and a copy of this final decision shall be served on petitioner; and

- (g) The Commission may not assess fees against the District of Columbia in conjunction with an appeal under this section.

438.9 At the discretion of the Commission, the time limits set forth in this section may be reduced or expanded.

438.10 A decision issued by the Commission shall be final and cannot be appealed to any administrative body or court.

438.11 To the extent practicable, the parties may rely on the District of Columbia Superior Court Rules of Civil Procedure for additional procedural guidance.

439 PROGRAM MANAGEMENT

439.1 This section shall apply to the enhanced suitability screening provisions contained in Sections 406 through 438 of this chapter.

439.2 The Mayor's authority to make suitability determinations under this chapter is delegated to the Director of the DCHR who shall also serve as the program administrator for agencies under the personnel authority of the Mayor.

439.3 If the program administrator determines that an existing employee is unsuitable to continue serving in a covered position, and that he or she should be separated from employment, the removal action shall be carried out by the employing agency in accordance with the employee's type of appointment (*i.e.*, probationary, term or permanent, etc.) and service (*i.e.*, Career, Legal, Excepted, Management Supervisory Service, etc.), and the applicable legal and regulatory provisions governing adverse actions, including but not limited to Chapter 16 of the District Personnel Manual and applicable collective bargaining agreement provisions.

439.4 If an employing agency fails or refuses to remove an employee based on a finding that its employee is unsuitable to continue his or her employment, the program administrator may carry out the adverse action in accordance with the procedures applicable to the employee.

440 REPORTING

440.1 Each program administrator for agencies covered by this chapter shall prepare and submit compliance reports to the Mayor every six (6) months following the effective date of this chapter.

440.2 Each report shall be submitted to the Mayor and include statistical information showing:

- (a) Total number of positions within the agency;
- (b) Total number of new hires;
- (c) Total number of positions identified agency-wide as safety, protection and security sensitive;
- (d) Any changes in the numbers reported in Subsection 440.2(c) since the last report;
- (e) Total number of general suitability screening checks conducted and compliance with Section 403 of this chapter;
- (f) Total number of consumer credit checks conducted, including the number of derogatory results received, and types of actions taken, (if any);
- (g) Total number of criminal background checks conducted, the number of derogatory results, and types of actions taken, (if any);
- (h) Total number and type of drug tests conducted, types of drugs detected, and types of actions taken, (if any);
- (i) Total number and type of alcohol tests conducted, positive results, and types of actions taken, (if any); and
- (j) Total number of traffic record checks conducted, types of derogatory results, and types of actions taken, (if any).

441 CONFIDENTIALITY

441.1 Unless publicly available, all records received pursuant to this chapter shall be confidential and are for the exclusive use of making a suitability determination. The records shall not be released or otherwise disclosed to any person except when:

- (a) Required to carry out the application process, including any appeals to the Commission;
- (b) Requested by the Mayor, or his or her designee, for the purpose of an official inspection or investigation, including investigations related to litigation initiated against the District of Columbia;
- (c) Ordered by a court;
- (d) Authorized by the written consent of the individual being investigated; or

- (e) Utilized for a corrective, adverse, or administrative action in a personnel proceeding including but not limited to, disciplinary actions under Chapter 16 of these regulations.

441.2 Any individual who discloses confidential records that were received in accordance with the Child and Youth, Health and Safety Omnibus Amendment Act of 2004, is subject to criminal penalties including a fine of no more than one thousand dollars (\$1,000), imprisonment for not more than one hundred and eighty (180) days, or both.

442 SUITABILITY RECORDS

442.1 Records created and maintained pursuant to this chapter shall be subject to the following:

- (a) Information related to suitability screening and suitability determinations shall be kept in strict confidence in accordance with this section and with Chapter 31 of these regulations;
- (b) Sources of information shall not be disclosed except as specifically authorized in this chapter and in Chapter 31 of these regulations;
- (c) Reports of screenings conducted by a program administrator shall not be disclosed to the individual screened, nor may the information be discussed with him or her in a manner that would reveal or permit him or her to deduce the source of the information.
- (d) The restrictions contained in Subsection 442.1(c) shall not apply to the following:
 - (1) Information of public record;
 - (2) Information from District government personnel records which could be obtained on request by the subject employee under the provisions of Chapter 31 of these regulations; and
 - (3) Other sources of information in reports of investigation may be disclosed to the subject of the investigation only if the personnel authority obtains the information independently, such as by interviewing the subject, or by obtaining permission, in writing, from the sources named to use the information and to identify the source.

442.2 A subordinate agency head (or his or her designee) who has delegated personnel authority pursuant to Sections 403 or 406, shall provide the Director of the DCHR information to document the results of each suitability investigation conducted by

the subordinate agency. Unless otherwise specified, the information shall be provided prior to the effective date of appointment of an individual.

443 DRIVERS OF COMMERCIAL MOTOR VEHICLES

443.1 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 (2014 Repl.)), 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.

443.2 The provisions of Subsection 443.1, 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.

499 DEFINITIONS

499.1 When used in this chapter, the following meanings apply:

Administrative action – official reprimands, suspensions, reductions in grade, or removals under the corrective and adverse action provisions for the Career Service contained in Chapter 16 of Subtitle B, Title 6 of these regulations; and other similar penalties, up to and including removal, for employees in services other than the Career Service.

Agency – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or regulation adopted under authority of law. The term agency shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

Alcohol – for the purposes of Sections 425 through 434, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol, regardless of its packaging form, storage, or utilization.

Applicant – an individual who has filed a résumé or electronic (web-based) application for employment in the District government.

Appointee – a person who has been made a conditional job offer to a position, compensated or voluntary, subject to the satisfactory completion of a general or enhanced suitability screening.

Child – an individual twelve (12) years of age and under.

Covered position – for the purposes of Sections 406 through 440, a position, compensated or voluntary, that is designated as safety, protection, or security sensitive position.

Days – calendar days, unless otherwise indicated.

Derogatory information - any information that detracts from the character or standing of the individual for the position which he or she occupies or for which he or she has applied.

Drug – for the purposes of Sections 425 through 434, an illegal drug 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.

Elderly – age 65 years or older.

Employee – an individual who performs a service for the District government and receives compensation for the performance of such service.

Finance related – involving access to or control of financial instruments, processes or systems;

Follow-up test – a series of unannounced drug and/or alcohol tests conducted periodically after an employee returns to the workplace upon satisfactorily completing treatment requirements. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

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

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in Title IV of the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-604.01, *et seq.*).

Post-accident or post-incident test – for the purposes of Sections 425 through 434, an examination that is administered to a District government employee who, while on duty, is involved in a vehicular or other type of

accident resulting in personal injury, 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 a drug or alcohol on part of the employee.

Program administrator – the Director of the D.C. Department of Human Resources for agencies subordinate to the Mayor, or his or her designee; or the agency head for independent agencies, or his or her designee (if applicable).

Protection sensitive position – a position with duties or responsibilities caring for or ensuring the well-being of children or youth, patients, elders, or other vulnerable persons, including but not limited to the positions listed in Subsection 411.2 of this chapter.

Random drug or alcohol test – for the purposes of Sections 425 through 434, an examination that is administered to a District government employee in a safety sensitive position, at an unspecified time, for the purpose 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 test – for the purposes of Sections 425 through 434, an examination that is administered to a District government employee based on the reasonable belief by a supervisor that an employee is under the influence of a 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 425 through 434, referral of an employee for testing by the District government to determine drug or alcohol usage.

Returned to duty test – a one-time, announced drug and/or alcohol test required as a condition of an employee's return to the workplace upon satisfactorily completing required treatment for substance abuse.

Safety sensitive position – a position with duties or responsibilities which if performed while under the influence of drugs or alcohol, could lead to a lapse of attention that could cause actual, immediate and permanent physical injury or loss of life to self or others, including but not limited to the positions listed in Subsection 410.3 of this chapter.

Security sensitive position – a position of special trust that may be reasonably expected to affect the access to or control of activities, systems, or resources that are subject to misappropriation, malicious mischief,

damage, loss or impairment of control of communication, including but not limited to the positions listed in Subsection 412.3 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)).

Substantial evidence – the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion of an administrative board or agency, even though other reasonable persons might disagree. Under the substantial evidence rule, the reviewing tribunal will defer to an agency determination so long as, upon an examination of the whole record, there is substantial evidence upon which the agency could reasonably base its decision.

Suitability – the quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.

Volunteer – an individual who works with the District government without monetary or other financial compensation.

Vulnerable adult – an individual eighteen (18) years of age or older who has a physical or mental condition which impairs his or her ability to provide for their own care or protection.

Youth – an individual between thirteen (13) and seventeen (17) years of age.

D.C. Register Updates for Chapter 4 of the D.C. Personnel Regulations,
Organization for Personnel Management

The following *D.C. Register* citations identify when a given section(s) of Chapter 4 Organization for Personnel Management, 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 |
|--------------------------------------|--|--|---|
| 32 DCR 75 (1/4/85) | Unknown | Unknown | |
| 33 DCR 4447 (7/25/86) | Unknown | Unknown | |
| 51 DCR 928 (1/23/04) | Sections 400, 401, and 499 | Entire chapter DPM Transmittal No. 112 | The rules amended the entire chapter. |
| 51 DCR 11591 (12/24/04) | Section 400 and 499; new sections 402, 403, 404, 405, 406, 407, 408 added | Entire chapter DPM Transmittal No. 124 | The rules were amended to add the following new sections: 402, Suitability Policy; 403, General Provisions on Suitability; 404, Suitability: Applicability; 405, Suitability Checks and Background Investigations; 406, Background Investigations for Information Technology Systems Personnel in Subordinate Agencies; 407, Suitability Actions Against Employees Initiated by Personnel Authorities; and 408, Suitability Records. |
| 52 DCR 6646 (7/15/05) | New section 412 added; section 499 | Page(s) 12 - 25 DPM Transmittal No. 134 | The rules implemented the provisions of Title II of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005. Title II of the Act required that criminal background checks be obtained for: (1) persons being considered for paid employment, or unsupervised voluntary services, with District government agencies that meet the definition of "covered child or youth services provider;" and (2) employees and unsupervised volunteers in District government agencies considered covered child or youth services providers. The Act also required 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; that employees and unsupervised volunteers submit to periodic criminal background checks; and that rules be issued to implement the provisions of the title. The provisions of the Act were contained in new section 412, Criminal Background Check and Traffic Record Check Requirements – District Government Agencies Considered Covered Child or Youth Services Providers. |
| 55 DCR 724 (1/25/08) | Sections 402, 403, 405, 407, 412 and 499; new sections 413 through 425 added | Entire chapter DPM Transmittal No. 160 | The rules amended sections 412 and 499 of the chapter, and added new sections 413 through 425 to the chapter, pertaining to Title II of D.C. Law 15-353. |
| 55 DCR 8870 (8/15/08) | Subsections 414.2 (d) and (e) | Page(s) 14 DPM Transmittal No. 174 | The rules amended subsections 412.2 (d) and (e) of the Chapter to delete the language limiting agency coverage pursuant to D.C. Law 15-353 for the Fire and Emergency Medical Services Department (FEMSD) and Metropolitan Police Department (MPD) to specific organizational units within the FEMSD and MPD. |
| 56 DCR 004346 (6/5/09) | 400, 406, 407, 408, 414, 419 | Page(s) 1, 5, 9, 12, 15, 16, 21, 22, 23, 24 E-DPM Transmittal No. 190 | The rules amended section 414.2 of the chapter 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 criminal background checks and traffic record checks for the protection of children and youth pursuant to Title II of D.C. Law 15-353 (Act). Additionally, section 407 of the chapter, on suitability actions initiated or taken by personnel authorities, has been amended to clearly state that the personnel authority (not the employing agency) shall take the action terminating an employee who fails a criminal background check pursuant to the Act; and section 419 of the chapter, on the review and determination process for employees covered under |

| | | | |
|---------------------------|---|--|---|
| | | | <p>the Act, has been amended to, among other things, clarify the process for the termination of employees who fail a criminal background check pursuant to the Act.</p> <p>Finally, in addition to the amendments to sections 414.2, 407, and 419 of the chapter, other amendments, mostly non-substantive and unrelated to the Act, were made to sections 400, 404, 406, and 408 of the chapter.</p> |
| 58 DCR 00036 (1/21/11) | 403, 405, 407, 412, 416, 418, 419, 420, 421, 422, 423, 424, 426 (new), 427 (new), and 499 | Page(s) 4 – 10, 12, 13, and 17 - 36 E-DPM Transmittal No. 201 | <p>The rules: (1) amended section 420 to specify the challenge process for employees and the procedure for applicants, appointees, and volunteers covered by the Criminal Background Checks for the Protection of Children Act of 2004, as amended (Act) to challenge a final agency action which results in denial, removal, or termination of a volunteer, or a conditional or provisional appointee covered by the Act; (2) to add a new section 426 to the chapter to address the limited concurrent personnel authority delegated to the Chief of the Fire and Emergency Medical Services Department via Mayor’s Order 2009-166; and (3) to add a new section 427 to provide regulations to govern suitability appeals before the Commission on Human Rights in compliance with the Act. Also, amendments were made to sections 403, 405, 407, 412, 416, 418, 419, 421, 422, 423, and 424 of the chapter, and subsections in those sections are renumbered to maintain uniformity in the chapter as a result of adding the new sections and subsections. The definitions of the terms “<i>applicant</i>,” “<i>appointee</i>,” “<i>background investigation</i>,” “<i>children</i>,” “<i>covered assignment</i>,” “<i>covered child or youth services provider</i>,” “<i>covered duties and responsibilities</i>,” “<i>covered position</i>,” “<i>non-covered duties and responsibilities</i>,” “<i>non-covered position</i>,” “<i>person being considered for employment</i>,” “<i>volunteer</i>,” and “<i>youth</i>” are being amended; and</p> |

| | | | |
|-----------------------------|-------------------------------|---|---|
| | | | definitions of the terms “ <i>administrative action</i> ,” “ <i>disposition</i> ,” and “ <i>substantial evidence</i> ” are being added to section 499 of the chapter. |
| 62 DCR 013820 (10/23/15) | Sections 400, 401, and 499 | Entire chapter DPM Transmittal No. 223 | The rules amended the entire chapter. |