DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

BULLETIN NO. 5 **OCTOBER, 2014**

SUBSTANCE ABUSE POLICY

Section 1: Purpose

It is the mission of the District of Columbia Fire and Emergency Medical Services Department (D.C. Fire & EMS) to fully protect the safety of the public and its employees, and to provide the citizens of the District with the best possible services available. Substance abuse is in direct contradiction to that mission and will not be accepted.

Section 2: Policy Statement

The use of illegal drugs and abuse of controlled substances or alcohol by employees of the D.C. Fire & EMS Department will not be tolerated. Such conduct jeopardizes the safety of the public whom we are sworn to protect and our employees. The use of Urinalysis Testing for drug use and/or abuse of a controlled substance, and the use of a Breathalyzer Test for abuse of alcohol shall constitute the primary means of detecting and deterring drug and alcohol use and abuse within the D.C. Fire & EMS Department.

Section 3: Definitions

For the purposes of this policy:

3.1 "Adulterated sample" means a urine specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration.

3.2 "Alcohol" means 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.

3.3 "Alcohol concentration" (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 Liters of breath as indicated by an evidential breath test device.

3.4 "Alcohol use" means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

3.5 "Alternative Breath Collection Protocol" means the protocol to be used when an employee attempts, but cannot provide a sufficient amount of breath to complete alcohol testing.

3.6 "Breath" means alveolar breath.

3.7 "Children" means persons twelve (12) years of age or younger.

3.8 "Confirmation test" means, when testing for alcohol, controlled substances or illegal drugs, a second analytical procedure that is independent of the screening test in order to ensure reliability and accuracy.

3.9 "Controlled substance" means any of the substances listed in Schedules I through V of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code §§ 48.901 *et. seq.* 2006 Repl.) (Controlled Substances Act); as it may be amended from time to time.

3.10 "Covered employee" means:

a. D.C. Fire & EMS Department personnel; including the D.C. Fire & EMS Chief, the Assistant Fire Chiefs (AFC), the Deputy Fire Chiefs (DFC), the Battalion Fire Chiefs (BFC), the Fire Marshal, Captains, Pilots, Marine Engineers, Lieutenants, Sergeants, Assistant Pilots, Assistant Marine Engineers, Firefighters, Fire Inspectors, and Fire Investigators, EMS Supervisors, Emergency Medical Technicians and Paramedics, and all other personnel who hold positions involving the direct care and custody of children, including but not limited to; educational activities, assessment, case management and support services, medical or clinical services, prevention and intervention services, mentoring services, health care services, public safety services, including counseling or public education intervention about safety, crime prevention, fire safety, youth problem solving, or driving a motor vehicle to transport children or youth.
b. All employees who are responsible for the maintenance, repair and inspection of official government vehicles.
c. All employees who are required to possess a Commercial Driver's license, (i.e. Fleet Maintenance Division) to the extent that this policy does not conflict with U.S. Department of Transportation rules and regulations (in the event of a conflict, the Department of Transportation rules and regulations shall govern).

3.11 "Dilute Sample" means a urine sample with creatinine and specific gravity values that are lower than expected for human urine and, specifically, a sample that has a creatinine concentration equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL.

3.12 "Disabling damage" means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Examples of excluded damage:

a. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
b. Tire disablement without other damage even if no spare tire is available.
c. Headlight or tail light damage.

d. Damage to turn signals, horn, or windshield wipers which make them inoperative.

3.13 "Drug" means any illegal drug and does not include the prescribed use of controlled substances and other medications.

3.14 "Drug and alcohol testing" means testing in accordance with Section 10 of this policy for alcohol, controlled substances, and/or drugs.

3.15 "EMIT" means enzyme-multiplied-immunoassay test.

3.16 "Evidential Breath Testing (EBT) Device" means a device for the evidential testing of breath for the presence of alcohol. The testing performed with an EBT device may be either screening tests or confirmation tests.

a. The EBT device used to perform any screening or confirmation test must be one that is approved by the National Highway Transportation Safety Administration (NHTSA) for this purpose, and that appears on NHTSA's conforming products list, as required under 49 C.F.R. §§ 40.229 and 40.231 at the time that the test is performed.
b. In all cases, any EBT device used to perform any test under this policy must be properly used, calibrated, inspected, and maintained strictly in accordance with the requirements of 49 C.F.R. § 40.23 3.
c. A test performed with an EBT device that does not meet the aforementioned requirements shall not be valid.

3.17 "GC/MS" means Gas Chromatography-Mass Spectrometry methodology.

3.18 "Independent Confirmation Test" means a second test of a specimen by an independent laboratory. The independent laboratory must be certified by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration to perform job-related forensic testing for alcohol, controlled substances and drugs at the time the test are performed.

3.19 "Medical Review Officer" (MRO) means a licensed physician responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an employee's confirmed positive test result together with his or her medical history and other relevant biomedical information.

3.20 "Motor Vehicle Operator" means an employee who drives any type of vehicle, including but not limited to, passenger vehicle, ambulance, engine, ladder truck (including tillerman) in the performance of his or her duties.

3.21 "MSO" means the Medical Services Officer.

3.22 "PFC" means the Police and Fire Clinic.

3.23 "Positive Breathalyzer Test" means an alcohol concentration of .020 or greater. Alcohol concentration of .020 to less than .040 will require that the employee undergo mandatory rehabilitation. Alcohol concentration of .040 or greater will result in a recommendation of termination.

3.24 "Post-Accident Employee" means a covered employee 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 alcohol, controlled substances, or drugs on the part of the employee.

3.25 "Random Testing" means testing conducted on a covered employee at an unspecified time to determine whether the employee has used alcohol, controlled substance(s) or drugs in contravention of this policy.

3.26 "Reasonable Suspicion" means specific, contemporaneous observations that can be articulated concerning the appearance, behavior, speech, or body odors of an employee, that there is a reasonable basis to suspect that a test would show the employee is under the influence of alcohol, a controlled substance or drugs.

3.27 "Refusal to Submit" to an alcohol, controlled substance, or illegal drug test means that a covered employee:

a. Fails to appear for any test within 1.5 hours after being relieved of duty and directed to do so by the Agency;
b. Fails to remain at the testing site until the testing process is complete;
c. Fails to provide a sufficient amount of breath, urine or blood specimen, for any alcohol, controlled substance or drug test required by this policy, without a valid medical reason;
d. In the case of a directly observed or monitored collection in a drug or alcohol test, fails to permit the observation or monitoring of the employee's provision of a specimen;
e. Fails or refuses to take a second test when required under this policy;
f. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process;
g. Fails to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, confrontational behavior that disrupts the collection process); or
h. Is reported by the laboratory performing the test, and verified by the MRO, as having a verified adulterated or substituted test result.

3.28 "Safety-Sensitive" means a position with duties and responsibilities that require the incumbent to provide services that affect the health, safety, and welfare of children, youth and adults including but not limited to, educational activities; assessment, case management and support services; medical or clinical services; prevention and intervention services; mentoring services; health care services; public safety services, including counseling or education intervention about safety, crime prevention, fire safety, youth problem solving; or driving a motor vehicle to transport children or youth.

3.29 "Screening Test" means:

a. In testing for controlled substances or illegal drugs an EMIT analysis under which "negative" urine specimens are excluded from confirmation.
b. In alcohol testing, analytic procedures using an EBT device to determine whether an employee may have a prohibited concentration of alcohol in a breath or blood specimen.

3.30 "Shy Bladder Protocol" means the protocol to be used for employees who are unable to produce a urine sample within a reasonable time.

3.31 "Split Sample" means the splitting of the original specimen into two samples. One sample undergoes immediate drug screening and the other is transferred to storage to be available for screening by an independent laboratory.

3.32 "Substance Abuse" means the use of alcohol, controlled substances, or illegal drugs in violation of this policy.

3.33 "Substituted Sample" means a urine sample that is certified by the laboratory as having a creatinine level of less than 2 mg/dL, or as "creatinine not detected."

3.34 "Tampering" means tampering with a sample in order to prevent a valid test by adulteration, dilution, substitution, or any other means.

3.35 "Trained Observer" means managers and/or supervisors who have received training in drug abuse detection and recognition; documentation; intervention; and any other appropriate topics.

3.36 "Youth" means an individual between thirteen (13) and seventeen (17) years of age, inclusive.

Section 4: Use of Prescribed Drugs and Over-the-Counter Medications

4.1 Employees taking either prescribed or over-the counter medication(s) which has the potential to impair job performance must notify their immediate on-duty supervisor of this fact prior to assuming duty. The recommended dosage on the packaging will not be exceeded. The supervisor shall direct the employee to report to the PFC if there is a concern that the employee is unable to work in a safety sensitive position. The employee shall advise the MRO of the name, dosage, and known side effects of the drug. The MRO shall determine whether the employee is able to assume duty.

An employee who, in good faith, believes that it is not necessary to report his/her use of medications under this subsection shall not later be disciplined for disclosing his/her use of such medications on the disclosure form required prior to testing, as provided in Section 10.2.

4.2 An employee taking either prescribed or over-the-counter medication(s) who feels any unanticipated side effects, or who feels he/she is in any way impaired, must immediately notify his/her immediate on-duty supervisor of this fact. The supervisor shall then direct the employee to report to the PFC, where the MRO shall determine whether the employee may resume normal duties.

4.3 Transportation to the PFC shall be arranged to ensure that a employee who feels impaired, or who is potentially impaired, is not required to transport him/her self.

Section 5: Events for Which Testing is Required

5.1 Employees who are required to undergo an annual or other duly ordered physical examination shall be subject to alcohol, controlled substance(s) and drug testing.

5.2 Reasonable Suspicion.

The immediate supervisor or manager shall make a reasonable suspicion referral after conferring with another officer or Battalion Fire Chief for testing of an employee when there is a reasonable basis to suspect that a test would show the employee is under the influence of alcohol, controlled substance(s), or drugs in violation of this policy. Reasonable suspicion means specific, contemporaneous observations that can be articulated concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion may be based on direct observation, a pattern of erratic behavior, work performance indicators of drug and alcohol abuse, as well as any other reliable indicators. The observations may include indications of the chronic and withdrawal effects of alcohol, controlled substance(s), or drug abuse.

5.3 Arrests.

An employee arrested on or off duty for a violation of the Controlled Substances Act, or a violation of any comparable statute in another jurisdiction shall be referred to the PFC for testing prior to his or her next regularly scheduled duty shift.

5.4 Post Accident:

a. Following a vehicle accident involving a government vehicle or equipment that meets any of the conditions listed below, a covered employee who has been involved, either as a driver or in another direct fashion (such as controlling traffic in an interSection), shall be referred for drug and alcohol testing when any of the following occur:

    i. The accident results in loss of human life;
    ii. One (1) or more motor vehicles (either District government or private) incur(s) disabling damage, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle;
    iii. Anyone receives bodily injury which requires immediate medical attention away from the scene.

iv. The employee receives or is likely to receive a citation under District of Columbia law or the law of another jurisdiction for a moving violation arising from the incident;

b. Following any vehicular or other type of accident occurring while a covered employee is on duty and which results in personal injury or property damage, or both, and 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 alcohol, controlled substance(s), or drugs on the part of the employee, the employee shall be referred for drug and alcohol testing.

5.5 Covered employees shall be subject to random testing for the presence of alcohol, controlled substances and drugs in accordance with Section 9 of this Policy.

5.6 When employees are ordered for testing as a result of any of the aforementioned events, the supervisor or manager shall prepare a Special Report thoroughly describing the circumstances and factors that gave rise to the referral, identifying all witnesses to the incident or behavior, all statements made by and to the employee, and all orders given to the employee. The Special Report shall be forward through the chain of command to the appropriate AFC.

Section 6: Substances Subject to Testing

6.1 Covered employees will be tested for cocaine, marijuana, phencyclidine (PCP), opiates- with an expanded opiates panel, amphetamines, benzodiazepines, methadone, propoxyphene, barbiturates, quaaludes, and their derivatives, and alcohol. The Department reserves the right to test for other substances if suspected.

6.2 Screening for drugs not listed in Section 6.1 shall be conducted at the discretion of the MRO in accordance with the procedures set forth in this order when there is reasonable suspicion that a member has used another illegal or controlled substance.

Note: To obtain information concerning screening and confirmation levels, a written request must be made to the Department Medical Services Officer (MSO).

Section 7: Prohibited Conduct

7.1 All employees, including those who are not defined as covered employees, under this policy are prohibited from the use of alcohol, controlled substances and/or drugs while on duty, as required by the federal Drug-Free Workplace Act of 1998.

7.2 In accordance with Chapter 39 of the District Personnel Manual (DPM), 6 D.C.M.R. 3900 *et. seq.*, the following conduct shall subject covered employees to disciplinary action:

a. Pre-Duty Use: Use of alcohol by an employee within four (4) hours prior to reporting for duty;
b. Consuming alcohol or drugs while on duty;
c. Reporting for duty or remaining on duty if it is determined that the member has an alcohol concentration of .020 or greater as indicated by an alcohol breath test:
d. Refusing an order to submit to testing required under this policy;
e. Using drugs at any time;
f. Reporting for duty or remaining on duty while taking controlled substances, prescribed or over-the-counter medications that have the potential to impair the employee's performance of duties, unless the employee has complied with the provisions of Section 4;
g. Testing positive under this policy for alcohol, controlled substances and/or drugs;
h. Willfully tampering with, adulterating, or substituting a sample submitted for a test that is duly authorized under this policy;
i. Referring a covered employee for drug or alcohol testing without following the procedures required under this policy; or
j. Disclosing information, including medical information and testing results, required to be kept confidential under this policy to unauthorized persons.

Section 8: Management Responsibility

8.1 Pre-Duty and On-Duty Use and Possession.

a. No supervisor having knowledge that an employee is using alcohol while on duty, or has used alcohol within four hours prior to reporting for duty, shall permit the employee to drive a vehicle on District of Columbia business or to perform safety sensitive functions.

b. No supervisor having knowledge that an employee is using, has used or is in possession of a controlled substance(s) or illegal drugs that have the potential of impairing his/her performance while on duty, shall permit the employee to drive a vehicle on District of Columbia business or perform safety sensitive functions, unless the use is approved in accordance with Section 4 above.

8.2 Any employee who unintentionally ingests, or is forced to ingest, alcohol, a controlled substance(s), or drugs, shall immediately report the incident to their supervisor. The supervisor shall ensure appropriate medical steps are taken to protect the employee's health and safety.

8.3 Supervisors and managers authorized to make testing referrals based upon reasonable suspicion shall receive training in drug abuse detection and recognition; documentation; intervention; and any other appropriate topics. Documentation that such training has been successfully completed must be maintained in the employee's personnel or official Department training file. Officers and Supervisors possessing current certifications as an EMT or Paramedics are considered as having met the training and documentation requirements by virtue of their NREMT and NREMTP credentials. Supervisors and/or managers who have not completed such training may not refer any employee for testing based upon reasonable suspicion.

8.4 An employee seeking help for a possible drug or alcohol dependency who has not tested positive and/or violated this policy may seek assistance in confidence through programs such as EAP, COPE, private doctor, and the PFC without fear of disciplinary action, provided that this is his/her initial request for formal assistance.

8.5 The Department will notify the representative labor organizations monthly of the number of confirmed positive drug and alcohol tests.

Section 9: Random Drug Testing

9.1 All covered employees shall be subject to random on-duty testing for the presence of alcohol, controlled substances and drugs.

9.2 Random testing shall be conducted throughout the year. The minimum annual percentage rate of covered employees subject to random testing shall be twenty (20) percent of the average total number of covered employees on the payroll on the first day of each calendar quarter (January 1, April 1, July 1, and October 1).

9.3 The selection of employees for random testing shall be made by the D.C. Fire & EMS Department's Office of Human Resources (HR). The names shall be selected by a scientific computer-generated random selection method. Under the selection process, each covered employee will have an equal chance of being selected for testing each time a selection is made. FEMS currently is divided into 4 platoons, random testing will be based on the platoon system. The day work chief officers, members of other Divisions and other civilian employees in safety sensitive positions will be assigned to one of the four platoons.

9.4 On each day that random testing is to be conducted, HR shall generate a list of up to 2 employees per platoon group. The list shall be generated using employee payroll identification numbers only. Once the list of employees subject to random testing for the period is generated, HR shall forward the list to the MSO and the Professional Standards Officer (PSO). The PSO shall effectuate notice to the employee. The immediate supervisor will then be notified for proper journal entries. The Division Head shall be notified to initiate personnel relief for the selected member. The employee will have 90 minutes to report to the PFC for testing upon relief. The employee will sign a notice at the PFC regarding the random drug/alcohol screening.

9.5 If the employee is on duty but is not in quarters, the PSO will gain the assistance of the Division Head to locate and give notice to the member. In this case, the MSO shall ensure that the employee completes the random testing process. Under no circumstances may the officer or supervisor disclose to any other person that the employee has been ordered to report before the order is communicated, By the PSO (or by the MSO) directly to the employee. The person being selected for testing shall be replaced during the testing at the work site as the needs of the Agency dictate.

9.6 An employee selected for testing who is on duty or in an administrative leave status pending disciplinary action, shall not be excused from testing, allowed to reschedule testing, or allowed to

take sick or other leave after being notified of testing, except in extremely unusual circumstances. Extended time to report to the PFC may be allowed by the PSO if the member resides outside of the Metropolitan area. Such circumstances must be documented by the PSO.

9.7 If an employee selected for testing is on previously approved administrative leave, annual leave, sick leave, or scheduled day off when selected for random testing, he/she shall not be tested that day but will be notified upon their return to duty and tested on his/her next scheduled work day that the PFC is open.

9.8 An employee on military leave, sick leave over 30 calendar days, or leave without pay shall not be subjected to random testing.

Section 10: Testing Procedures

10.1 When an employee reports to the PFC or other designated testing facility for the purpose of a physical examination or any drug or alcohol testing, that employee shall be required to have in his/her possession their official identification card or other positive proof of identification. The purpose of this requirement is to ensure that the employee being tested is the individual he/she claims to be. (Other detailed instructions regarding preparation for a physical examination are contained in Article XI of the Order Book and shall be followed in their entirety by employees reporting for a physical examination).

10.2 Employees must list all medication on the back of the drug screening form as directed. This will include both prescribed and over-the-counter medication(s).

10.3 Collection of Urine Specimens for the Purpose of Testing for Controlled Substances and Drugs.

a. A urine specimen will be submitted at the PFC or other designated testing site.

b. The specimen jar containing the collected sample will be marked immediately after use for proper identification and sealed by the person giving the sample.

c. Specimens submitted will be sent out and tested for the presence of controlled substances and the drugs listed in Section 6 of this Bulletin.

d. Chain of custody will be strictly accounted for by each person who handles the specimen.

e. A split sample will be taken. If a positive result is obtained from the sample used for the confirmation test, at the employee's request, the split sample may be sent for testing to an independent laboratory. The independent laboratory must be certified by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration to perform job-related forensic testing for alcohol, controlled substances, and drugs at the time the test is performed. The independent laboratory results must be furnished by the laboratory directly to both the MRO and the employee.

If the second sample does not yield a positive result, no disciplinary action shall be taken against the employee

10.4 Testing of Urine Samples for the Presence of Controlled Substances and Drugs.

a. The initial screening test shall be conducted at an independent laboratory certified by the U.S. Department of Health and Human Services to conduct such testing, by qualified personnel. The initial screening test must be a forensic drug test, specifically using EMIT methodology.

b. If the initial screening test is positive for any of the prohibited substances, a confirmation test shall be conducted. The confirmation test shall use GC/MS methodology.

c. If the confirmation test is positive, the MRO, upon receiving the results, shall conduct a medical review and evaluation of the results to determine if there is any non-prohibited reason for the positive result. If an employee tests positive on the confirmation test for opiates and is unable to submit sufficient documentation for the reasons for the positive test, additional testing on the same sample shall be conducted to determine the origin of the opiates.

d. If the MRO's review determines that the positive confirmation test result cannot be explained by any non-prohibited reason, the MRO will notify the MSO of the results of the review.

e. Depending on where the employee is assigned, the MSO shall notify the appropriate AFC of the test results. The initial notification will be transmitted by confidential written memorandum. The employee shall be sent a copy of such memorandum.

f. A positive confirmation test will result in disciplinary charges in accordance with Section 13 of this Policy.

g. Information relating to test results will not be released to any employee of the D.C. Fire & EMS Department or anyone else unless he or she has a need to know this information in the performance of his/her duties or unless the employee has executed and signed a release form.

h. Employees tested may request, in writing, a copy of the Department's notification of his/her test results. Said request shall be honored.

i. Samples resulting in a negative confirmation test will be disposed of by the testing lab. Samples resulting in a positive confirmation test will be preserved for at least twelve (12) months, or, if disciplinary charges are initiated, until all related proceedings have been concluded, whichever is later.

10.5 Collection of Alcohol Testing Samples

a. Alcohol testing shall be performed by technicians (screening test technicians and breath alcohol technicians) who meet the qualifications and training requirements set forth in 49 C.F.R. § 40.211 *et seq.* and who have been certified to perform tests using the specific EBT device(s). Alcohol testing shall be performed at a location and under the conditions specified in 49 C.F.R. §§ 40.22 1 and 223. Alcohol screening and confirmation tests shall be performed using an EBT device. In addition, the EBT device used to perform a confirmation test shall conform to the requirements specified in 49 C.F.R. § 40.231(b).

b. If an employee is ordered to undergo both drug and alcohol testing, the alcohol testing shall be performed first, unless doing so is impracticable.

c. Alcohol testing shall be performed using an individually wrapped or sealed mouthpiece. Selection of the mouthpiece shall be made either by the employee being tested or by the technician in full view of the employee. Testing procedures shall conform to the manufacturer's instructions. The employee shall be shown the displayed test result, and the result shall be documented on the testing form in view of the employee.

10.6 Alcohol Screening and Confirmation Tests.

a. A breathalyzer shall be deemed negative if it is less than 0.020. If the screening test result is negative, the technician shall record the results, sign and date the testing form, and provide a copy to the employee. No further alcohol testing shall be performed during this visit.

b. If the initial screening test is 0.020 or greater, a confirmation test shall be performed. The technician shall advise the employee not to eat, drink, or put anything into his/her mouth prior to the confirmation test. To ensure the integrity of the results, the confirmation test must be conducted no earlier than fifteen (15) minutes after completion of the screening test, but not later than thirty (30) minutes after completion of the screening test.

c. The confirmation test shall be conducted as follows:

    i. In the presence of the employee, the technician must complete an air blank on the EBT to be used and show the reading to the employee. If the reading is 0.00, the test may proceed. If it is greater than 0.00, the air blank must be repeated. If the second air blank does not produce a reading of 0.00, a different EBT must be used. The number on the substituted device and the reason for the substitution must be noted on the form. Once taken out of service, an EBT may not be used again until after an external calibration

check has been performed, with proper documentation, and it has been verified that the device is operating correctly.

ii. Procedures for obtaining the sample used in the confirmation test shall be the same as described in Section 10.5(c).

iii. The technician shall record the test results, sign and date the testing form, have the employee do the same, and provide a copy to the employee.

d. Any positive confirmation test (0.020 or greater) requires that the employee be immediately removed from duty. The employee must remain in a non-duty status for 24 hours, and must be tested prior to assuming duty. All return to duty tests must be below 0.020, the employee will not be allowed to resume duty if the return to duty test is 0.020 or greater. In addition, if the testing results are 0.020 or greater, the results shall be transmitted to the MRO. The MRO shall evaluate the results and determine if there is a non-prohibited reason for the result. If the MRO determines that the positive confirmation test result cannot be explained by any non-prohibited reason, the MRO will notify the MSO of the results of the review.

e. The MSO shall advise the appropriate AFC of any confirmation test result. This notification will be transmitted by confidential written memorandum. The employee shall be sent a copy of such memorandum.

f. Based on Section 13, a positive test result will result in disciplinary charges.

g. Members testing positive for alcohol at the 0.020 level and above are not allowed to leave the PFC and are directed to remain on the premises until relieved from duty by the MSO.

10.7 Special Procedures for Post-Accident Testing.

a. The determination whether testing is required pursuant to Section 5.4 of this Bulletin shall be made by the appropriate DFC, based on the specific criteria set forth in Section 5.4. The immediate supervisor shall ensure a Special Report is generated and submitted which documents the particulars concerning the referral. This shall be submitted no later than the end of the tour of duty.

b. Testing pursuant to Section 5.4 of this Bulletin must be performed within 2 hours of the accident for the results to be valid.

c. Medical treatment for an employee shall not be delayed or compromised for purposes of performing post-accident testing. Instead, samples shall be collected and testing performed in accordance with the instructions of the employee's treating physician.

10.8 Anomalies.

a. Alternative Breath Collection Protocol. When an employee attempts, but can not provide a sufficient amount of breath to complete alcohol testing the following Alternative Breath Collection protocol shall be used. The Employee will be given a second opportunity to provide a sample of breath. Employees who are unable to perform the alcohol test after the second opportunity will be evaluated by a PFC provider. Follow-up testing will be conducted at the discretion of the PFC provider. Employees who are found not to have a medical condition that would prevent a sample will be charged with refusing to submit a sample. (See, 49 C.F.R. §40.265)

b. Adulterated and Dilute Sample. When a testing laboratory reports to the MRO that a urine specimen is adulterated or dilute, the employee shall be ordered to retest prior to or upon reporting for his/her next tour of duty. Report of an Adulterated Sample requires direct observation of the sample collection per PFC protocol. Employees will not be allowed to assume duty until after they have submitted a second or additional sample for testing. Employees may assume duty while results are pending from the adulterated or dilute samples.

c. Shy Bladder Protocol. When an employee is unable to produce a urine sample within a reasonable time the following Shy Bladder protocol shall be used. Employees will be afforded the opportunity to drink a measured amount of water over a specific period of time per PFC protocol. If the employee is still unable to produce a sample, he/she will be examined by a PFC provider to determine if there is a medical reason why he/she is unable to produce a sample. Employees who are found not to have a medical condition that would prevent a sample will be charged with refusing to submit a sample. Follow-up testing will be conducted at the discretion of the PFC provider. (See, 49 C.F.R. §§ 40.193 and 40.195)

Section 11: Testing After-Hours

11.1 Samples shall be collected at the PFC whenever it is open (during the hours of 0700 to 2100 hours Monday through Friday). If the PFC is closed at the time testing is required, the following procedures shall be followed.

a. In the case of a reasonable suspicion referral or post-accident testing, the supervisor and/or manager shall make notification to the closest in-service BFC that testing is required. The BFC shall notify the Fire Liaison Officer (FLO) at the Office of Unified Communications (OUC), and shall request that the PFC Medical Director be contacted in regards to after-hours testing.

b. The BFC shall specify the reason for testing (i.e., post-accident, reasonable suspicion). The FLO shall obtain the estimated time of arrival for the certified PFC employee to arrive at the PFC. This information shall be relayed to the BFC making

the request. This coordination will assist the PFC Medical Director towards facilitating a certified PFC employee to conduct the requested testing within a 2 hour timeframe from the initial request for testing. The BFC shall notify the appropriate Deputy Fire Chief, Operations Division or applicable Division Head of the situation when feasible.

c. The BFC shall escort the employee to the PFC for testing.

11.2 The BFC may utilize the Metropolitan Police Department or other comparable law enforcement authority to conduct alcohol testing only upon prior approval of the appropriate DFC, Operations Division or applicable Division Head. Such requests, including all of the circumstances surrounding such requests, shall be documented in a Special Report by the BFC. The DFC, Operations Division or applicable Division Head's approval or disapproval, along with the date and time communicated, shall be included in such documentation. Such documentation shall be filed prior to the end of the BFC's shift.

Section 12: Alcohol and Substance Abuse Rehabilitation Programs

12.1 Child and Youth, Safety and Health Omnibus Amendment Act (CYSHA) of 2004.

a. All employees occupying positions as enumerated in section 3.10 of this Bulletin are hereby notified and shall be given written notice that their position is considered as safety sensitive and covered by the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 as amended (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 through 1-620.37, 2006 Repl.). Upon being hired the employee must complete a drug and alcohol disclosure, as well as submit to an updated background check within thirty (30) days of the date of official hire.

b. Upon receipt of written notice of the drug and alcohol testing program, each employee shall be given one opportunity to immediately seek treatment if requested and appropriate in accordance with section 8.4 of this Bulletin. This initial opportunity is non-punitive. Such employee will be placed in an approved substance abuse program, or may enter an approved substance abuse program of his/her choice upon notification to the MRO.

c. Any employee covered by CYSHA who after their initial opportunity and 30 day notification period tests positive on any subsequent test for alcohol at a level of .040 or greater; or tests positive for drugs as identified in section 6.1 of this Bulletin is considered as having violated the substance abuse policy. The employee will be placed in a mandatory rehabilitation program and given a single opportunity to rehabilitate themselves outside of the self-disclosure opportunity during the initial notification period.

d. A non-probationary employee who tests at or above .020 and less than .040 for alcohol the first time will be subject to discipline and placed in a mandatory rehabilitation program. (The alcohol concentration is reduced to .020 after the enrollment in or completion of a rehabilitation program.)

12.2 Any employee who voluntarily enters a rehabilitation program in accordance with requirements set forth in this bulletin is subject to the following provisions:

a. A list of approved alcohol and substance abuse rehabilitation programs shall be made available by the D.C. Fire & EMS Department. Rehabilitation programs shall be selected from programs found on the Substance Abuse & Mental Health Services Administration (SAMHSA) treatment facility locator found at http://findtreatment. samhsa.gov/

b. The PFC does not accept testing results from a facility that does not meet industry standards and criteria as established by DOH and/or SAMHSA. Testing results from all facilities approved by the MRO shall be accepted by the Agency. The acceptance of test results from other facilities shall be evaluated by the MRO on a case-by-case basis.

c. Employees entering a rehabilitation program will be placed in a leave status of their choice for a minimum of forty-five (45) calendar days. That status will be one of the following:

   i. Sick Leave;
   ii. Annual Leave;
   iii. Compensatory Leave;
   iv. Leave-Without- Pay (written request); or
   v. Any combination of the above.

d. The rehabilitation program requires that the employee be tested and counseled while in the program. The employee will be required to comply with the treatment plan developed by the substance abuse case manager. Operational employees will be tested to accommodate their work schedule with approval of the MSO. This schedule will remain in effect unless the employee is otherwise notified.

e. Employees shall report to the PFC for testing prior to 0900 hours.

f. After entry into the rehabilitation program, the employee must test negative for 45 consecutive days. If at any time an employee tests positive on a confirmation test after testing negative, or tests positive at a higher concentration than on the previous test, he or she shall be recommended for termination. For purposes of alcohol a confirmation test of .020 shall be considered a positive result. Note: Slight increases of marijuana may occur without ingestion of the drug. Therefore, if the level of marijuana fluctuates within 3 nanograms during the first 21-day period, the employee shall not be subject to disciplinary charges.

g. After expiration of the 45 consecutive days, the employee will return to full-duty status with the following stipulations:

   i) No driving for 45 days following return to duty;
   ii) Approval of a PFC Behavioral Health Services provider;
   iii) Weekly counseling;
   iv) Weekly drug and/or alcohol testing as directed by the PFC Behavioral Health Services provider.
   v) Participation in a rehabilitation program for a period of 1 year from the date of his or her first negative test. All test results must be negative during this period and the employee is to be released from the program with no restrictions.

h. After successful completion of a drug or alcohol rehabilitation program, the employee will be subject to a complete Fitness for Duty physical to included drug and alcohol testing, prior to his/her return to full duty. Upon return to a safety sensitive position, the employee will be subject to random, reasonable suspicion and annual physical drug and alcohol testing as prescribed by this policy.

12.3 Nothing in this bulletin is intended to deprive an employee from any and all rights he/she may claim under the Rehabilitation Act of 1973 or the Americans with Disabilities Act, including but not limited to a request for reasonable accommodation(s).

Section 13: Discipline

13.1 Refusal to Submit, Adulteration, and Substitution.

An employee who refuses to submit to a test required under this Bulletin, or who willfully substitutes or adulterates a sample required to be provided for testing under this Bulletin, shall be recommended for termination.

13.2 Positive Test Result - Post-Accident.

An employee tested pursuant to the post-accident protocol set forth in Section 5.4, and who receives a positive result on a confirmation test for alcohol, controlled substances, or drugs shall be terminated.

13.3 Positive Test Results – Alcohol, Controlled Substances and/or Drugs.

If, at any time during his/her career, after the one post hiring opportunity, an employee receives another positive result on any confirmation test duly administered for alcohol at a concentration of 0.020 or greater, controlled substances and/or drugs under this Bulletin, the employee shall be charged with violation of the Substance Abuse Policy and shall be terminated. There will be **no** "Last Chance Agreement".

13.4 Failure to Successfully Complete Rehabilitation Program.

An employee who, having tested negative after entry into the program, fails to test negative for 45 consecutive days while in rehabilitation program; who tests positive at the same or higher concentration as on the previous test; or who tests positive after testing negative, while in the rehabilitation program, will be considered to have failed to successfully complete the program, and will be recommended for termination. After enrollment in or completion of a rehabilitation program, a member who receives a positive result on any confirmation test duly administered for alcohol at a concentration of 0.020 or greater will be recommended for termination.

13.5 Referral for testing: made in bad faith; purposes of harassment; without adequate grounds; or without following required procedures:

a. A referral for testing made in bad faith or for purposes of harassment shall be treated as a Class IV infraction, and may subject the employee to termination.

b. A referral for testing negligently made (i.e., without adequate grounds or without following required procedures) shall be treated as a Class III infraction.

13.6 Improper Disclosure of Medical Information or Confidential Testing Information.

An employee who discloses information, including medical information and testing results, required to be kept confidential under this policy to unauthorized persons shall be charged with a Class IV infraction if the disclosure was willful or a Class III infraction if the disclosure was negligent.

Section 14: Probationary Employees, Applicants and Cadets

Probationary employees, applicants and cadets are not eligible for the second chance opportunity. Those members who violate the D.C. Fire & EMS Department Substance Abuse Policy shall be terminated. Probationary employees and cadets must not test at the .020 concentration or greater for alcohol or they will be terminated.

Applicants who test positive for controlled substances, drugs, or alcohol shall not be hired.

Section 15: Effective Dates

The D.C. Fire & EMS Department Bulletin 5 Substance Abuse Policy is effective immediately upon issuance. All previous Bulletins, Special Orders and issuances governing alcohol, controlled substances and/or drug use are hereby rescinded.