

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Pursuant to the authority set forth in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, as added by section 861 of the Legal Service Establishment Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-260, D.C. Official Code § 1-608.61 (2001), and as added by section 881 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002, effective July 25, 2002, D.C. Law 14-182, D.C. Official Code § 1-608.81 (2001) (collectively, the Act), the Attorney General hereby gives notice of his adoption, on an emergency basis, of the following amendments to Chapter 36 of the District of Columbia Personnel Regulations, pertaining to the Legal Service (Legal Service Rules).

Emergency action to adopt these rules is necessary for the immediate preservation of the public peace and welfare, because the Legal Service Rules do not adequately clarify the employment status of an attorney who, because of administrative action or other circumstances affecting him or her, has lost his or her qualification as an attorney in good standing of the District of Columbia Bar and who therefore cannot fully comply with the requirements of the Act. This amendment to the Legal Service Rules will clarify the authority of the Attorney General, under the Act, to take action to prevent an attorney in the Office of the Attorney General from being paid or providing legal services to the District government when that attorney does not qualify to receive a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals because that attorney has been suspended or a more serious sanction has been imposed on them by the D.C. Court of Appeals. These emergency rules were adopted on March 16, 2006 and will remain effective for 120 days, or until publication of final rules in the D.C. Register, whichever occurs first.

The Attorney General hereby also gives notice of his intent to take final rulemaking action to adopt these proposed rules (which are identical to the emergency rules) in not less than 30 days from the date of publication of this notice in the D.C. Register.

Chapter 36 of the D.C. Personnel Regulations is amended as follows:

The table of contents is amended as follows:

By adding the phrase: "3618 Attorney Good Standing in the D.C. Bar Requirement--Office of the Attorney General for the District of Columbia".

A new section 3618 is added to read as follows:

**3618 ATTORNEY GOOD STANDING IN THE D.C. BAR REQUIREMENT---
OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF
COLUMBIA**

- 3618.1 The provisions of this section shall be applicable to each attorney appointed to the Legal Service who is employed by the Office of the Attorney General for the District of Columbia and who is required to be a member of the District of Columbia Bar as a prerequisite of employment. This section is also applicable to an individual who is a member in good standing of the bar of another jurisdiction and who has filed a timely application for admission to the District of Columbia Bar.
- 3618.2 An appointee to a Legal Service position shall remain a member in good standing of the District of Columbia Bar during his or her employment in the Legal Service. An appointee who is a member in good standing of the bar of another state or territory and who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar shall present a certificate of good standing to the Office of the Attorney General upon notification of his or her admission to the District of Columbia Bar, within five (5) business days of such notification, and such admission shall occur within 360 days of the appointee's initial employment as a attorney by the District government. The appointee shall thereafter remain a member in good standing of the District of Columbia Bar.
- 3618.3 An appointee to a Legal Service position shall notify the Attorney General immediately of any sanction proposed by the D.C. Office of Bar Counsel, any hearing regarding any proposed disciplinary action, or any disciplinary action taken by the D.C. Court of Appeals against that attorney.
- 3618.4 An appointee to a Legal Service position who is suspended from practice by the D.C. Court of Appeals shall not remain in an attorney position in the Office of the Attorney General during the suspension period. The Attorney General may, at his or her discretion, request the re-assignment of such an appointee to a non-attorney position in the Office of the Attorney General.
- 3618.5 An appointee to a Legal Service position shall not be compensated for services provided pursuant to the appointee's employment as an attorney in the Office of the Attorney General unless such an individual is duly licensed and authorized to practice as an attorney under the law of the District of Columbia. This prohibition shall not apply to an appointee who is a member in good standing of the bar of another state or territory who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar and such admission has occurred within 360 days of the appointee's initial employment as a attorney by the District government.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Darryl G. Gorman, Esq., 1350 Pennsylvania Avenue, N.W., Room 409, Washington, D.C. 20004. Copies of these rules may be obtained at the address stated above.

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 202 and 204 of the District of Columbia Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§2-302.02 and 2-302.04)(PPA), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of the adoption of the following emergency rules, amending Chapter 22 of Title 27 of the *District of Columbia Municipal Regulations (Contracts and Procurements)*. The rules will amend Chapter 22 of Title 27 D.C. Municipal Regulations to reflect changes necessary to implement the *Debarment Procedures Amendment Act of 2004*, effective April 12, 2005 (D.C. Law 15-327; D.C. Official Code § 2-308.04) (Act).

A Notice of Emergency and Proposed Rulemaking to amend Chapter 22 was published in the *D.C. Register* on July 29, 2005 (52 DCR 7043), and the current emergency rules expired on March 9, 2006. No substantive changes have been made to the text of the proposed rules as published. The final rules to amend Chapter 22 have been submitted to the Council of the District of Columbia for its review pursuant to section 205(b) of the PPA (D.C. Official Code §2-302.05(b)), and may not become effective until the expiration of the 60-day period for Council review or upon approval by Council resolution, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*. The rules are necessary to provide continuing authority to use the provisions in the amended Chapter 22 until the final rules are effective.

Emergency rulemaking action is necessary to allow the Debarment and Suspension Panel (Panel) created by the Act to conduct hearings on certain companies and their principals due to convictions and other improprieties in connection with the award of District contracts. Without these emergency rules, the Panel will not be able to conduct debarment proceedings on companies and their principals that have been convicted and have violated District contracting laws. The debarment or suspension actions pertain to serious questions about the appropriateness of the District contracting with certain companies because of convictions or other improprieties in connection with the award or

performance of District contracts, and the length of time for which a contractor should be debarred from District contracting. Adoption of emergency rules to establish these procedures to allow the Panel to convene is necessary for the immediate preservation of the public peace, health, safety, or welfare, in accordance with D.C. Official Code §2-505(c).

To ensure that amended chapter 22 will continue in effect, action was taken on March 7, 2006 to adopt the following rules on an emergency basis effective on that date. These rules will remain in effect for up to one hundred twenty (120) days from the date of adoption, unless superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

CHAPTER 22

CONTRACTORS

Chapter 22 is amended by adding a new section 2218 to read as follows:

2218 Debarment and Suspension Panel

- 2218.1 This section shall apply to any debarment or suspension that is required to be heard by the Debarment and Suspension Panel ("Panel") in accordance with the *Debarment Procedures Amendment Act of 2004*, D.C. Law 15-327, effective April 12, 2005 ("Act").
- 2218.2 For any debarment or suspension that the Panel hears, the Chief Procurement Officer ("CPO") shall transmit to the Panel his debarment or suspension recommendation and any supporting documentation.
- 2218.3 Upon receipt of the documentation specified in section 2218.2 from the CPO, the Chair of the Panel shall convene the Panel to conduct a hearing of the debarment or suspension in accordance with Title 27 *D.C. Municipal Regulations*, sections 2213 through 2217, except as provided in section 2218.4. The term "Director," as it appears in sections 2213 through 2217, shall mean the "Panel."
- 2218.4 For any debarment or suspension that the Panel hears, the period of time provided in section 2214.1(c) shall be shortened to fifteen (15) days after receipt of the notice.
- 2218.5 The Panel shall hear and decide, *de novo*, all debarments and suspensions required to be heard in accordance with this section and the Act.
- 2218.6 The attendance of at least five (5) members of the Panel shall constitute a quorum to hear a debarment or suspension.

2218.7 A majority vote of those present and voting shall be necessary and sufficient for any action taken by the Panel. Each Panel member in favor of the debarment or suspension decision of the Panel shall indicate his or her agreement with the decision by signing the decision.

2218.8 *Ex parte* communications, as defined in section 2299.1, shall be prohibited. Excluded from *ex parte* communications are those that:

(a) are specifically authorized by law to be made on an *ex parte* basis;

(b) relate to the Panel's administrative functions or procedures; or

(c) are matters of public record.

A Panel member or staff member for the Panel who receives an *ex parte* communication prohibited by this section, shall immediately report its receipt to the Chair of the Panel and prepare a memorandum describing in detail the substance of the communication. The memorandum shall be placed in the debarment or suspension file, along with the actual communication if it is in written form. The Panel shall provide a copy of the memorandum to all parties.

2218.9 Panel members shall promptly advise the Chair of the Panel of any conflict of interest, or appearance thereof, relating to any debarment or suspension action under consideration by the Panel. Each member of the Panel shall disqualify himself or herself from acting on matters in which he or she has a conflict of interest, or the appearance thereof, in accordance with Chapter 18 of the District of Columbia Personnel Regulations.

2218.10 The Panel shall keep and maintain a case docket of current debarments or suspensions under the Panel's jurisdiction; copies of decisions and final orders of the Panel; and copies of the Panel's rules. The case docket, updated monthly, shall provide the names of the companies or individuals proposed for debarment or suspension, the case number, the date the Panel received the debarment or suspension, and the date of any scheduled hearing on the merits of the debarment or suspension. The case docket, copies of decisions, final orders, and rules shall be available for inspection by the public at the office of the Chair of the Panel.

Section 2299.1 is amended by adding the following definitions:

Debarment and Suspension Panel – the panel established by the *Debarment Procedures Amendment Act of 2004*, D.C. Law 15-327, effective April 12, 2005 (“Act”), consisting of the Chief Procurement Officer and a representative from the Office of the Chief Financial Officer, the Office of the Deputy Mayor for Planning and Economic

Development, the Deputy Mayor for Operations, the Director of the Office of Labor Relations and Collective Bargaining, and from each agency which, in the judgment of the Mayor, would be directly and significantly affected by the proposed debarment.

Ex parte communications – any oral or written communication with the Panel, which excludes one or more parties to the case, concerning the merits of the case pending before the Panel, made by any persons directly or indirectly involved in the outcome of the case.

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD**

NOTICE OF EMERGENCY RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §§ 3-1306 and 3-1322.01, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby given notice of the adoption, on an emergency basis, of amendments to Chapters 12 ("Bingo, Raffles, Monte Carlo Night Party and Suppliers' Licenses"), 16 ("Monte Carlo Night Parties") and 99 ("Definitions") of Title 30 DCMR. The amendments authorize Texas Hold'em as a charitable game playable at Monte Carlo Night Parties.

Not-for-profit organizations require new methods of raising revenue in order to fund their charitable, benevolent, eleemosynary, humane, religious, philanthropic, recreational, social, educational, civic, fraternal, or other nonprofit purposes. The addition of Texas Hold'em as a game playable at Monte Carlo Night Parties has been shown in other jurisdictions to increase the number of supporters attending Monte Carlo Night Parties, thereby increasing the amount of money raised for worthy causes. The adoption of amendments to allow for Texas Hold'em is needed immediately so that not-for-profit organizations can secure continued funding without disrupting important community services provided by these organizations.

On March 7, 2006, the Council of the District of Columbia, pursuant to the "Monte Carlo Night Party Licensure Amendment Rulemaking Emergency Declaration Resolution of 2006" (PR16-0680) and the "Monte Carlo Night Party Licensure Amendment Rulemaking Emergency Approval Resolution of 2006" (PR16-0681) approved the amendments as set forth herein. The amendments were original published for public comment in the March 3, 2006, issue of the *D.C. Register*.

These emergency rules will remain in effect up to one hundred twenty (120) days from the date of adoption, unless earlier superseded by another rulemaking notice.

**AMEND CHAPTER 12, "BINGO, RAFFLES, MONTE CARLO NIGHT PARTY
AND SUPPLIERS' LICENSES"**

Amend subsection 1204.16 by substituting the following:

1204.16 The Agency shall issue the following two (2) classes of Monte Carlo Night Party licenses:

- (a) A **Class 1** Monte Carlo Night Party license shall allow for the operation of a Monte Carlo Night Party in accordance with the provisions of Chapter 16. A Class 1 Monte Carlo Night Party license shall not include any Texas Hold'em

card games. The application fee for a Class 1 Monte Carlo Night Party license shall be one hundred dollars (\$100); and

- (b) A **Class 2** Monte Carlo Night Party license shall allow for the operation of a Monte Carlo Night Party to include Texas Hold'em in accordance with the provisions of Chapter 16. The application fee for a Class 2 Monte Carlo Night Party license shall be five hundred dollars (\$500). A Class 2 Monte Carlo Night Party license shall be required for a Charitable Texas Hold'em Tournament.

Amend subsection 1204.17 by substituting the following:

- 1204.17 In accordance with D.C. Official Code § 3-1322.01(c) no licensed organization shall hold more than two (2) Monte Carlo night parties in a calendar year.

Amend subsection 1204.18 by substituting the following:

- 1204.18 The aggregate value of the prize or prizes offered at a Monte Carlo Night Party shall not exceed one hundred thousand dollars (\$100,000).

Amend subsection 1204.19 by substituting the following:

- 1204.19 The application for a Monte Carlo night party for senior citizen groups shall be ten dollars (\$10).

Amend subsection 1204.20 by substituting the following:

- 1204.20 The required fees for bingo, raffles and Monte Carlo night party licenses shall cover license fees for the member-in-charge, deputy member-in-charge, and the member responsible for gross receipts.

Amend Chapter 12 by deleting subsection 1204.21 in its entirety.

- 1204.21 **[RESERVED]**

AMEND CHAPTER 16, "MONTE CARLO NIGHT PARTIES"

Amend subsection 1602 by substituting the following:

1602 MONTE CARLO NIGHT PARTY GAMES AND EQUIPMENT

- 1602.1 Only approved games of chance shall be permitted. Approved Monte Carlo night party equipment and games include all of the following:

- (a) All wheels;
- (b) Roulette;
- (c) All dice games;
- (d) Chip trays;
- (e) Twenty-one or blackjack;
- (f) Texas Hold'em;
- (g) Raffles conducted by a Monte Carlo night party license organization as set forth in § 1606;
- (h) Charity game tickets approved by the Agency. All unsold charity game tickets must be returned to the Agency representatives for destruction at the end of the event;
- (i) Any other Agency approved games;

1602.2 The following games and equipment shall not be used at a Monte Carlo night party:

- (a) Horse race films;
- (b) Slot machines, penny fall money fall, bull dozer or similar type machines or devices;
- (c) The game of bingo or bingo equipment;
- (d) Poker and other card games where the players compete against each other, with the exception of Texas Hold'em as authorized by this chapter; and
- (e) Any other games not specifically approved by the Agency and not listed in §1602.1.

Amend Chapter 16 by amending subsection 1603.16 to read as follows:

1603.16 A wager shall not be placed upon an event or upon a game involving personal skill except that Texas Hold'em may be played as authorized by this chapter.

Amend Chapter 16 by adding new subsections 1603.19 through 1603.31 to read as follows:

1603.19 Texas Hold'em shall not be conducted outside the hours listed on the license.

- 1603.20 Texas Hold'em shall be conducted as a tournament where all players pay the established entry fee for the same amount of chips.
- 1603.21 Texas Hold'em shall not be conducted in any manner that assigns a cash redemption value to the chips.
- 1603.22 Texas Hold'em shall be played with a standard 52-card deck without jokers.
- 1603.23 Texas Hold'em shall be played at tables large enough to accommodate a dealer and up to 7 players in such a manner as to ensure that the players may examine their cards without disclosing their value to other players.
- 1603.24 All cards shall be dealt by a Monte Carlo night party worker.
- 1603.25 The order of finish for the tournament shall be determined by one of the following methods:
- (a) If play continues until all but one player is eliminated, the order of finish shall be the order of elimination from last to first. The last remaining player shall be declared the winner.
 - (b) If play stops at a set time as defined in the house rules, the order of finish shall be determined by ranking the value of chips held by each player at the end of play from highest to lowest. The player having the highest value of chips shall be declared the winner.
- 1603.26 Prizes not exceeding \$500 per player per day may be awarded based on the method used for determining the order of finish.
- 1603.27 A player shall not bet on more than one hand in any round of play.
- 1603.28 Wild cards are prohibited.
- 1603.29 Hi/Lo games are prohibited. Winners shall be determined by the highest ranking Texas Hold'em combination.
- 1603.30 Re-buys are prohibited.
- 1603.31 Texas Hold'em shall not be played through the use of any electronic device, electromechanical device, or video terminal.

Amend Chapter 16 section 1604 to read as follows:

1604 METHOD OF PLAY

- 1604.1 In all dice games, the size of the dice shall be a minimum of three quarters of an inch (3/4 inch). The following rules shall be posted when dice games are played:

- (a) The dice shall hit the side boards of the table when thrown. If the dice do not hit the side boards, the roll is void and the dice shall be rolled again.
- (b) Only the dealer, operator or player may touch the dice. The player shall only touch the dice when it is the player's turn to roll the dice.

1604.2 When the game of blackjack is being played, the following rules apply and shall be posted:

- (a) The dealer shall draw on sixteen (16) and under and stand on seventeen (17) and over.
- (b) A player may only play one (1) hand at a table; and
- (c) There shall not be more than seven (7) players at one (1) blackjack table.

Amend Chapter 16 by adding new subsections 1604.3 through 1604.5 to read as follows:

1604.3 When the game of Texas Hold'em is being played, the following rules apply and shall be posted:

- (a) All suits have the same rank. The rank of cards, from highest to lowest, shall be ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, 2, except as provided in 1604.3(v)(1) where the ace may be counted low.
- (b) The dealer shall shuffle the cards prior to each round of play.
- (c) All players shall place an ante into the pot if required by the house rules.
- (d) Prior to the first round of play, the dealer shall place the dealer button in front of the player immediately to the dealer's left. The dealer shall move the dealer button to the next player in a clockwise direction prior to commencing each subsequent round of play.
- (e) The player immediately to the left of the dealer button shall post the required small blind before the beginning of each round of play.
- (f) The player immediately to the left of the small blind position shall post the required big blind before the beginning of each round of play.
- (g) When all but two (2) players have been eliminated from the table, the player with the dealer button shall post the small blind and the other player shall post the big blind.
- (h) All cards shall be dealt in a clockwise direction beginning with the player immediately to the left of the dealer button.

- (i) The dealer shall commence betting interval 1 by dealing one (1) card to each player face down, then a second card to each player face down.
- (j) Each player may examine their pocket cards at any time.
- (k) Each player shall keep their pocket cards in full view of the dealer at all times and must ensure that they are examined in a manner that does not disclose to other players their value. Players may not exchange information concerning their hand.
- (l) Players that drop from the round of play shall not reveal their pocket cards.
- (m) Betting for interval 1 shall proceed as follows:
 - (1) The player immediately to the left of the big blind position is the first to act and must call, raise, or drop.
 - (2) When all but two (2) players have been eliminated from the table, the player with the dealer button is the first to act and must call, raise, or drop.
 - (3) Betting continues in a clockwise direction until each player has an opportunity to call, raise, or drop with the exception of the player in the big blind position who may also check if no other player has raised.
- (n) The dealer shall commence betting interval 2 by burning a card and then dealing three board cards face up in the middle of the table, commonly referred to as the Flop.
- (o) Betting for interval 2 shall proceed as follows:
 - (1) The player immediately to the left of the dealer button is the first to act and must bet, check, or drop.
 - (2) Betting continues in a clockwise direction until each player has an opportunity to bet, check, call, raise, or drop.
- (p) The dealer shall commence betting interval 3 by burning a card and dealing one board card face up, commonly referred to as the Turn.
- (q) Betting for interval 3 shall proceed as in 1604.3(o).
- (r) The dealer shall commence betting interval 4 by burning a card and dealing one board card face up, commonly referred to as the River.
- (s) Betting for interval 4 shall proceed as in 1604.3(o).
- (t) Upon completion of four betting intervals:

- (1) If only one player remains in the round of play, (i.e., all but one player has dropped), the player is not obligated to show their hand.
- (2) If two or more players remain in the round of play:
 - (A) It shall be the obligation of the player who made the last bet to show their hand.
 - (B) If no player has placed a bet, it shall be the obligation of all players to show their hands.
- (u) Any combination of a player's pocket cards and/or board cards may be used to construct a standard five card poker hand.
- (v) The dealer shall:
 - (1) Declare the last remaining player the winner or determine the winning hand among the remaining players in accordance with the following ranking of poker combinations:
 - (A) Royal Flush is a hand containing an ace, king, queen, jack, and 10 of the same suit.
 - (B) Straight Flush is a hand containing five cards of the same suit in consecutive ranking. An ace may count high or low.
 - (C) "4 of a Kind" is a hand containing four cards of the same rank.
 - (D) "Full House" is a hand containing "3 of a Kind" and "1 Pair."
 - (E) "Flush" is a hand containing five cards of the same suit but not in consecutive ranking.
 - (F) "Straight" is a hand containing five cards of consecutive rank regardless of suit. An ace may count high or low.
 - (G) "3 of a Kind" is a hand containing three cards of the same rank.
 - (H) "2 Pair" is a hand containing two pairs.
 - (I) "1 Pair" is a hand containing two cards of the same rank.
 - (J) "High Card" is a hand that does not contain "1 Pair" or better.
 - (2) Resolve ties in the following manner:

- (A) In the event of equal ranking poker combinations of "4 of a Kind," "3 of a Kind," "2 Pair," or "1 Pair," the high card not used in the poker combination shall break the tie.
 - (B) If a tie cannot be broken, the pot shall be split equally.
- (3) Award the pot(s) to the player(s) with the winning hand.
- (w) The dealer shall collect all cards and shuffle them prior to the next round of play.
- (x) The dealer shall move the dealer button to the next player in a clockwise direction.
- (y) If only two players remain in a round of play, and one player does not have enough chips to call the bet made by the other player, then the player with the fewest chips may move all-in and the player with the most chips shall remove enough chips from their bet to make it equal to the bet of the player moving all-in. The round of play will then continue with no further betting.
- (z) If two or more players wish to bet more than the bet of another player moving all-in, the dealer shall establish a side pot.
- (1) The player moving all-in is eligible to win only the main pot, consisting of the antes, blinds, all previous bets, the bet of the player moving all-in, and the bets of the other players matching the all-in bet.
 - (2) The players with chips remaining may continue placing bets into the side pot(s) and are eligible to win both the main pot and side pot(s).
- (aa) A player is eliminated from the tournament when either of the following occurs:
- (1) The player is unable to post the required ante or blind.
 - (2) The player has lost all of their chips.
- (bb) No misdeal may be called after the first bet.
- (cc) In the event of a misdeal, additional antes or blinds shall not be required.
- (dd) Any dispute concerning Texas Hold'em shall be referred to the member-in-charge, or if the member-in-charge is unavailable, then the deputy member-in-charge.
- 1604.4 House rules for Texas Hold'em must be approved by the Agency.
- 1604.5 House rules for Texas Hold'em must be posted and made available to players.

AMEND CHAPTER 99, "DEFINITIONS"

Amend subsection 9900.1 by adding the following:

Ante- A term used in a Texas Hold'em game, a small forced bet required of all players before each hand.

All-In- when a player bets all their chips in a Monte Carlo Night Party game.

Betting Interval- in Monte Carlo Night Party games, the period of play when each player has an opportunity to bet, check, raise, call, or drop.

Big Blind- a term used in a Texas Hold'em game for the mandatory bet (typically twice the amount of the small blind) placed by the player to the left of the small blind position before any cards are dealt.

Board Cards- a term used in a Texas Hold'em game for the community cards dealt face up in the middle of the table that may be used by all players in constructing a standard five-card poker hand.

Burn- a term used in Monte Carlo Night Party games, to discard the top card from the deck face down.

Call- a term used in a Texas Hold'em card game when a player places enough chips into the pot to make their contribution equal to the contribution of any other player, but no greater.

Check- in a Texas Hold'em card game when a player remains in the round of play but does not wish to place a bet, provided no previous player has made a bet during that betting interval.

Dealer Button- in a Texas Hold'em card game, an object used to designate the player in the dealer position if that player were actually dealing the cards.

Drop- a term used in a Texas Hold'em card game, also known as fold, means a player discards their hand and no longer participates in the round of play.

Hand- a term used in a Texas Hold'em card game for any combination of two pocket cards and/or five board cards which are used to create a standard five card poker hand.

Hi/Lo- a variation of Texas Hold'em in which the highest and lowest poker hands split the pot (prohibited, see § 1603.29).

Monte Carlo Night Party - a licensed charitable gaming event to raise funds for charitable purposes at which games of chance customarily associated with a gambling casino are played and participants wager with imitation money to purchase prizes at the end of the event in accordance with D.C. Official Code § 3-1322.01 (2001).

Pocket Cards- a term used in a Texas Hold'em card game for the two cards dealt face down to each player that can only be used by that player in constructing a standard five-card poker hand.

Raise- a term used in a Monte Carlo Night Party card game when a player places enough chips in the pot to call, plus one or more chips.

Re-buy - a term used in a Texas Hold'em card game for the fee paid by an eliminated player to reenter the tournament (prohibited, see § 1603.30).

Round of Play- a term used in a Texas Hold'em card game for the period of play commencing with the first card dealt by the dealer and concluding with the awarding of the pot.

Side Pot- a term used in a Texas Hold'em card game for a new pot established by the dealer after a player has gone all-in, and additional bets have been placed.

Small Blind- a term used in a Texas Hold'em card game for a mandatory bet (typically half the amount of the big blind) placed by the player immediately to the left of the dealer button before any cards are dealt.

Texas Hold'em - a card game played at licensed Monte Carlo Night parties, authorized and played pursuant to the rules found at Title 30 of the DCMR.

Wild Card- a term used in a Texas Hold'em card game for a card that may serve as any other suit or value in making a poker hand (prohibited, see § 1603.28).

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

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2005-73, dated May 5, 2005; and in accordance with D.C. Act 16-259, the Criminal Background Checks for the Protection of Children Clarification Congressional Review Emergency Amendment Act of 2006 (Act), effective January 26, 2006, and any similar succeeding legislation, hereby gives notice of the adoption of the following emergency rules. The Act amended section 205 (c)(5) of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code 4-1501.01 *et seq.*) (2005 Supp.), to clarify that persons convicted of certain crimes are not automatically excluded from working as employees or unsupervised volunteers of District government agencies considered "covered child or youth services providers." The Act added a new section 207a, Assessment of Information Obtained from Criminal Background Check, providing that the information obtained from a criminal background check shall not create a disqualification or presumption against employment or volunteer status of an applicant unless the Mayor determines that the applicant poses a present danger to children or youth, and listing the factors to be considered in making such a determination. Finally, under section 207a (c) of the Act, applicants have a right to appeal a denial of employment or volunteer status based on a finding that they pose a present danger to children or youth to the Commission on Human Rights. Because D.C. Law 15-353 requires that rules be issued to implement the provisions of the title, and to ensure the preservation of the welfare of the public in general and the welfare of children and youth in particular, action was taken on February 15, 2006 to adopt the following rules on an emergency basis effective February 15, 2006. As a result of D.C. Act 16-259, the following changes were made to Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations (DCMR): sections 412.1, 412.3, 412.21, 412.24 through 412.26, 412.28 through 412.31, 412.35, and 412.37 were amended; a new section 412.38 was added to the chapter; section 412.38 was renumbered as 412.39 and amended; and sections 412.42 and 412.43 were renumbered as 412.43 and 412.44, respectively. In addition to the changes necessitated by the Act, the following changes were made to the chapter: section 412.4 (d) was amended to read "Fire Prevention Unit within the Fire and Emergency Medical Services Department (FEMSD), provided that the primary duties of any position designated as subject to the Act shall require direct contact with children or youth, and the incumbent of the position would not otherwise be subject to a criminal background check or traffic record check in accordance with existing policies and practices for the FEMSD;" a new section 412.4 (h) was added listing the Department of Employment Services as one of the subordinate agencies considered covered child or youth services providers under D.C. Law 15-353; sections 412.4 (h) and 412.4 (i) were designated as 412.4 (i) and 412.4 (j), respectively; a new section 412.4 (k) was added to read as follows: "(k) Any other subordinate agency which, as a result of a permanent or temporary change to its mission such as may be caused by a reorganization, or any other similar reason, shall become a covered child or youth services provider subject to the criminal background check and traffic record check provisions in the Act;" a new section 412.13 (t), "youth employment services," was added to the list of duties and responsibilities in section 412.3 used to identify and determine which positions shall be covered under the Act; and section 412.13 (t)

was designated as 412.13 (u). These emergency rules supersede the emergency rules adopted on November 1, 2005 and published at 52 DCR 10593 (December 2, 2005), and will remain in effect for up to one hundred twenty (120) days from February 15, 2006, unless earlier superseded by another rulemaking notice.

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2005-73, dated May 5, 2005; and in accordance with the Act, hereby gives notice of the intent to adopt the following rules in no less than thirty (30) days from the publication of this notice in the *D.C. Register*. The Act amended section 205 (c)(5) of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Act 15-759), to clarify that persons convicted of certain crimes are not automatically excluded from working as employees or unsupervised volunteers of District government agencies considered "covered child or youth services providers." The Act added a new section 207a, Assessment of Information Obtained from Criminal Background Check, providing that the information obtained from a criminal background check shall not create a disqualification or presumption against employment or volunteer status of an applicant unless the Mayor determines that the applicant poses a present danger to children or youth, and listing the factors to be considered in making such a determination. Finally, under section 207a (c) of the Act, applicants have a right to appeal a denial of employment or volunteer status based on a finding that they pose a present danger to children or youth to the Commission on Human Rights. Because D.C. Law 15-353 requires that rules be issued, the purpose of these rules is to implement the provisions of the Act by making the following changes to Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR: sections 412.1, 412.3, 412.21, 412.24 through 412.26, 412.28 through 412.31, 412.35, and 412.37 were amended; a new section 412.38 was added to the chapter; section 412.38 was renumbered as 412.39 and amended; and sections 412.42 and 412.43 were renumbered as 412.43 and 412.44, respectively. In addition to the changes necessitated by the Act, the following changes were made to the chapter: section 412.4 (d) was amended to read "Fire Prevention Unit within the Fire and Emergency Medical Services Department (FEMSD), provided that the primary duties of any position designated as subject to the Act shall require direct contact with children or youth, and the incumbent of the position would not otherwise be subject to a criminal background check or traffic record check in accordance with existing policies and practices for the FEMSD;" a new section 412.4 (h) was added listing the Department of Employment Services as one of the subordinate agencies considered covered child or youth services providers under D.C. Law 15-353; sections 412.4 (h) and 412.4 (i) were designated as 412.4 (i) and 412.4 (j), respectively; a new section 412.4 (k) was added to read as follows: "(k) Any other subordinate agency which, as a result of a permanent or temporary change to its mission such as may be caused by a reorganization, or any other similar reason, shall become a covered child or youth services provider subject to the criminal background check and traffic record check provisions in the Act;" a new section 412.13 (t), "youth employment services," was added to the list of duties and responsibilities in section 412.3 used to identify and determine which positions shall be covered under the Act; and section 412.13 (t) was designated as 412.13 (u). Upon adoption, these rules will amend Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), 51 DCR 928 (January 23, 2004), 51 DCR 11591 (December 24, 2004), and 52 DCR 6646 (July 15, 2005).

CHAPTER 4**ORGANIZATION FOR PERSONNEL MANAGEMENT**

Section 412 of Chapter 4 of the D.C. personnel regulations is amended as follows:

412 CRIMINAL BACKGROUND CHECK AND TRAFFIC RECORD CHECK REQUIREMENTS – DISTRICT GOVERNMENT AGENCIES CONSIDERED CHILD OR YOUTH SERVICES PROVIDERS

Section 412.1 is amended to read as follows:

- 412.1 Pursuant to Title II of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005, as amended on an emergency basis by D.C. Act 16-259, the Criminal Background Checks for the Protection of Children Clarification Congressional Review Emergency Act of 2006, effective January 26, 2006, and any similar succeeding legislation (jointly referred to as “the Act”), and as specified in this section, the Mayor and other personnel authorities shall be required to conduct criminal background checks and traffic record checks to investigate certain employees, volunteers, and persons being considered for employment with District government agencies that are “covered child or youth services providers,” as that term is defined in section 202 (3) of the Act and section 499 of this chapter.
- 412.2 Pursuant to section 211 (1) of the Act, District government agencies considered covered child or youth services providers shall begin conducting criminal background checks 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 the Act. The requirement for the criminal background checks shall apply not only to new appointees to paid and voluntary positions covered under the Act, but also to employees occupying positions covered under the Act. Such employees will be subjected to an initial criminal background check within the timeframe specified in this subsection and, subsequent to that, to periodic checks as specified in section 412.3 of this section.

Section 412.3 is amended to read as follows:

- 412.3 Pursuant to section 203 (g) of the Act, each employee or volunteer described in section 412.11 (c) and (d) of this section occupying a covered position shall be required to submit to periodic criminal background checks while employed by, or volunteering at, a District government agency considered a covered child or youth services provider. The provisions for periodic criminal background checks are specified in sections 412.36 through 412.39 of this section.

Section 412.4 (d) is amended; a new section 412.4 (h) is added; sections 412.4 (h) and 412.4 (i) are renumbered as 412.4 (i) and 412.4 (j), respectively; and a new section 412.4 (k) is added:

412.4 The following subordinate agencies shall be considered covered child or youth services providers subject to the criminal background check and traffic record check provisions of the Act. The standard for determining that an agency is subject to the Act is that as part of its mission, the agency, as a whole or certain components thereof, provides the types of direct services to children or youth, or for the benefit of children or youth, encompassed in the duties and responsibilities listed in section 412.13 of this section:

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;
- (d) Fire Prevention Bureau within the Fire and Emergency Medical Services Department (FEMSD), provided that the primary duties of any position designated as subject to the Act shall require direct contact with children or youth, and the incumbent of the position would not otherwise be subject to a background check or traffic record check in accordance with existing policies and practices for the FEMSD;
- (e) Metropolitan Police Department;
- (f) State Education Office within the Executive Office of the Mayor;
- (g) Department of Youth Rehabilitation Services;
- (h) Department of Employment Services;
- (i) Department of Mental Health;
- (j) Child and Family Services Agency; and
- (k) Any other subordinate agency which, as a result of a permanent or temporary change to its mission such as may be caused by reorganization or any other similar reason shall become a covered child or youth services provider subject to the criminal background check and traffic record check provisions in the Act.

412.5 A District government agency designated by the Mayor or independent personnel authority as a child or youth services provider subject to the Act, may challenge such a designation and the requirement to comply with the Act, by submitting a challenge of the designation, in writing, to the appropriate personnel authority, within five (5) days of the publication in the D.C. Register of the notice of final rulemaking implementing the criminal background check requirements of the Act. The submission shall include information and documentation deemed appropriate by the agency to challenge the designation. The personnel authority will evaluate the information and documentation

submitted by the agency and respond in writing within five (5) days of the receipt of the agency's challenge.

- 412.6 Pursuant to section 204 (b)(2) of the Act, traffic record checks shall be conducted on employees and supervised and unsupervised volunteers of District government agencies considered covered child or youth services providers who are, or on appointees who would be, required to drive motor vehicles to transport children or youth in the course of performing their duties. Traffic record checks shall be obtained from the traffic records maintained by the D.C. Department of Motor Vehicles.
- 412.7 Pursuant to section 205 (a) and (b) of the Act, criminal background checks will be conducted in accordance with Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment, by means of fingerprint and National Criminal Information Center checks.
- 412.8 Agencies subordinate to the Mayor that are subject to the Act, and independent District government agencies that are subject to the Act, shall cover the costs for criminal background checks and traffic record checks required under the Act.
- 412.9 The Director, D.C. Office of Personnel, shall enter into a Memorandum of Understanding (MOU) with the Chief, Metropolitan Police Department (MPD) stating that the MPD will conduct the criminal background checks under the Act, including fingerprinting, and develop internal operating procedures to conduct the checks, for agencies under the personnel authority of the Mayor.
- 412.10 Personnel authorities shall be responsible for conducting traffic record checks pursuant to the Act, and for developing internal operating procedures for conducting the checks.
- 412.11 Except as specified in section 412.12 of this section, criminal background checks pursuant to this section will be required for the following persons:
- (a) Each person being considered for paid employment with a District government agency considered a covered child or youth services provider, in a position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities;
 - (b) Each person being considered for voluntary service in a District government agency considered a covered child or youth services provider, in an unsupervised position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities;
 - (c) Each paid employee of a District government agency considered a covered child or youth services provider, who occupies a position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities; and

- (d) Each volunteer in a District government agency considered a covered child or youth services provider in an unsupervised position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities.

412.12 Criminal background checks are not required for the following persons:

- (a) A person being considered for compensated or voluntary employment with a District government agency considered a covered child or youth services provider that will not bring the person in direct contact with children or youth;
- (b) A volunteer in a District government agency considered a covered child or youth services provider who has only supervised contact with children or youth; however, if applicable, such person will be required to submit to a traffic record check pursuant to section 204 (b)(2) of the Act; and
- (c) A person being considered for compensated or voluntary employment with a District government agency considered a covered child or youth services provider who has an active federal security clearance.

412.13 Upon consulting with the head of a District government agency considered a covered child or youth services provider, the appropriate personnel authority shall identify and determine which positions in the agency shall be covered under the Act. In identifying the covered positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to, at least one (1) of the following duties and responsibilities:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
- (d) Educational activities;
- (e) Individual counseling;
- (f) Group counseling;
- (g) Assessment, case management and support services;
- (h) Psychiatric and psychological assessment services;

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

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

- (a) The underlying guiding standard to be applied in identifying positions that shall be subject to the criminal background check requirement and traffic record check requirement shall be one of reasonableness, coupled with the standards outlined in section 412.14 (b) through (k) of this section, as applicable.
- (b) A determination that a position is covered under the Act and subject to the criminal background check requirement shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 412.13 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.

- (c) The single fact that a position is located in a District government agency considered a covered child or youth services provider does not automatically make the position or its incumbent subject to the criminal background check requirement or the traffic record check requirement of the Act.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee or volunteer subject to the criminal background check requirement or traffic record check requirement of the Act.
- (e) Administrative, clerical, or technical support positions within the immediate office of the head of a District government agency considered a covered child or youth services provider as well as within other components, units, or divisions of the agency that provide non-operational support services shall not be subject to the criminal background check requirement unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 412.13 of this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely. Such positions may include, but are not limited to the head of the agency, special assistants, administrative officers, staff assistants, and secretaries.
- (f) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check upon the personnel action being effected and to periodic criminal background checks while detailed, temporarily promoted, or temporarily reassigned.
- (g) A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check upon being moved to the covered assignment and to periodic criminal background checks while in the covered assignment.
- (h) A determination that a position is subject to the traffic record check requirement under the Act shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties requires that any incumbent of the position drive a motor vehicle to transport children or youth in the course of performing his or her duties.
- (i) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a position that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the detail, temporary promotion, or temporary reassignment shall be subject to an initial traffic record check upon the personnel action being effected.

- (j) A volunteer whose assignment changes from non-covered duties and responsibilities to duties and responsibilities that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the voluntary assignment shall be subject to an initial traffic record check requirement upon being moved to the covered assignment.
 - (k) Except as specified in section 412.12 of this section, any position subject to the traffic record check requirement shall also be subject to the criminal background check requirement.
- 412.15 District government agencies considered covered child or youth services providers may submit information and documentation to the appropriate personnel authority to challenge the designation of a position as subject to a criminal background check or traffic record check. The personnel authority shall evaluate any information and documentation submitted by an agency, and promptly determine whether the original designation shall stand or be changed.
- 412.16 Vacancy announcements for positions identified and designated as requiring a criminal background check or traffic record check, or both, shall include statements informing each applicant that:
- (a) The position for which he or she is applying has been identified and designated as requiring a criminal background check or traffic record check, or both;
 - (b) If tentatively selected for the position, a criminal background check or traffic record check, or both, as appropriate, will be conducted; and
 - (c) The employing agency may offer employment to the appointee to the position contingent upon receipt of a satisfactory criminal background check or traffic record check, or both.
- 412.17 In the case of non-competitive recruitment for a position requiring a criminal background check or traffic record check, or both, the appropriate personnel authority shall inform the person being considered for employment, in writing, of the requirements specified in section 412.16 of this section.
- 412.18 The Director, D.C. Office of Personnel (or his or her designee), shall publish the list of positions in agencies under the personnel authority of the Mayor that are subject to a criminal background check or traffic record check, or both, in the District Personnel Manual (or any other procedural manual developed). The list shall be published on an annual basis.
- 412.19 An appointee to a compensated position with a District government agency considered a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory criminal background check or traffic record check, or both, and begin working in a supervised setting, prior to receiving the results of the

checks, and prior to the employing agency making a determination that the appointee meets the requirements of the Act. Upon making a determination to allow the appointee to begin working prior to receiving the results of the check or checks, the employing agency shall so inform the appropriate personnel authority.

- 412.20 An appointee to an unsupervised volunteer position with a District government agency considered a covered child or youth services provider will not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check or traffic record check, or both, are received and a determination is made that the appointee meets the requirements of the Act.

Section 412.21 is amended to read as follows:

- 412.21 Prior to a criminal background check being conducted, the appropriate personnel authority will inform each appointee, employee, or unsupervised volunteer subject to the check of the location of the office where the check will be conducted, when to report for fingerprinting, and provide each appointee, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:
- (a) To authorize the MPD or other entity, as appropriate, to conduct the criminal background check and confirm that the appointee, employee, or unsupervised volunteer has been informed that the employing agency is authorized to conduct a criminal background check;
 - (b) To affirm whether or not the appointee, employee, or unsupervised volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:
 - (1) Murder, attempted murder, manslaughter, or arson;
 - (2) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
 - (3) Burglary;
 - (4) Robbery;
 - (5) Kidnapping;
 - (6) Illegal use or possession of a firearm;
 - (7) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in

public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;

- (8) Child abuse or cruelty to children; or
 - (9) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;
- (c) To acknowledge in writing that the appointee, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
 - (d) To acknowledge that the employing agency may choose to deny the appointee employment or an unsupervised volunteer position, or to terminate an employee or volunteer, based on the outcome of the criminal background check;
 - (e) To provide any additional identification that is required, such as name, social security number, date of birth, and gender; and
 - (f) To inform the appointee or employee that a false statement on the form or forms may subject them to criminal penalties.
- 412.22 Upon receiving and completing the form or forms specified in section 412.21 of this section, the appointee or employee shall report to the designated location to be fingerprinted.
- 412.23 Upon completing each criminal background check, the designated MPD representative, or the representative for any other entity conducting the check, shall forward the check to the appropriate employing agency. The employing agency shall forward a copy of the check to the personnel authority upon completing the review and determination process pursuant to sections 412.24 through 412.32 of this section.

Section 412.24 is amended to read as follows:

- 412.24 Pursuant to section 207a (a) of the Act, the information obtained from a criminal background check will not immediately disqualify or create a presumption against employment or volunteer status of an appointee, employee, or unsupervised volunteer subject to the check, unless the Mayor determines that the appointee, employee, or volunteer poses a present danger to children or youth. The Mayor's authority to make such a determination is delegated to the head of each agency covered under the Act. The head of an agency covered under the Act may sub-delegate this authority to agency officials as appropriate.

Section 412.25 is amended to read as follows:

- 412.25 Except as provided in section 412.26 of this section, the heads of covered District government agencies shall consider the following factors to determine if an appointee subject to a criminal background check poses a present danger to children or youth that would make him or her ineligible for paid employment or unsupervised voluntary service:
- (a) The specific duties and responsibilities necessarily related to the employment sought;
 - (b) The bearing, if any, the criminal offense for which the appointee was previously convicted will have on his or her fitness or ability to perform one (1) or more of the duties or responsibilities of the position;
 - (c) The time which has elapsed since the occurrence of the criminal offense;
 - (d) The age of the person at the time of the occurrence of the criminal offense;
 - (e) The frequency and seriousness of the criminal offense;
 - (f) Any information produced by the appointee, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
 - (g) The public policy that is beneficial generally for ex-offenders to obtain employment.

Section 412.26 is amended to read as follows:

- 412.26 Notwithstanding the factors listed in section 412.25 of this section, a covered District government agency shall not employ or permit to serve as an unsupervised volunteer an appointee who has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.
- 412.27 Records of traffic infractions shall be judged on an individual basis for appointees whose duties would include driving a motor vehicle to transport children or youth as described in the Act. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the appointee ineligible for employment or voluntary service, if the appointee could be required to drive a motor vehicle to transport children or youth in the course of performing his or her duties.

Section 412.28 is amended to read as follows:

- 412.28 Based on the outcome of the criminal background check and application of the factors listed in section 412.25 of this section, each covered employing agency shall determine whether or not the appointee poses a present danger to children or youth, and whether a

final offer of appointment should be made or denied or, when the appointee to a compensated position was allowed to begin working in a supervised setting prior to receiving the results of the check, if he or she will be retained or employment will be terminated.

Section 412.29 is amended to read as follows:

- 412.29 If the determination is to deny the final offer of appointment or terminate employment, the employing agency shall do all of the following:
- (a) Send the appointee a written notification of the determination. The written notification shall inform the appointee of the specific basis for the determination, and of his or her right to obtain a copy of the criminal background check report and challenge the accuracy and completeness of the report or the basis for denying the final offer of appointment stated by the employing agency, in writing, within ten (10) days of receiving the written notification; and
 - (b) Send the personnel authority a copy of the written notification.

Section 412.30 is amended to read as follows:

- 412.30 In challenging the results of a criminal background check report or the basis for denying the final offer of appointment stated by the employing agency, the appointee may present information and documentation to clarify any errors in the report resulting from mistakes in identity, and any mitigating circumstances that may exist concerning the report.

Section 412.31 is amended to read as follows:

- 412.31 Upon receiving a challenge, the appropriate employing agency shall promptly make a determination on the case and notify the appointee of the decision, in writing, with a copy to the personnel authority. In accordance with section 207a (c) of the Act, if employment is denied, or terminated because the appointee, employee, or unsupervised volunteer, as applicable, poses a present danger to children or youth, the written notification shall inform the individual that he or she may appeal the denial to the Commission on Human Rights of the District within thirty (30) days of the date of the written notification.
- 412.32 If the determination is that a final offer of appointment should be made to an appointee who did not begin working prior to the employing agency receiving the results of the check, the employing agency shall promptly notify the personnel authority.
- 412.33 Upon receiving the employing agency's determination that a final offer of appointment should be made to an appointee, the appropriate personnel authority shall promptly issue a final offer letter to the appointee. If the determination is to terminate employment, the personnel authority will process the action to terminate the employment within ten (10) days of receiving the employing agency's determination.

412.34 An appointee under this section who intentionally provides false information that is material to the application in the course of applying for a position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405) (2001).

Section 412.35 is amended to read as follows:

412.35 A volunteer in an unsupervised position may use the same successful criminal background check conducted on him or her for a period of two (2) years when applying for multiple unsupervised volunteer positions, if the volunteer provides a signed affirmation stating whether or not he or she has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in section 412.21 (b)(1) through (9) of this section, or their equivalent in any other state or territory, since the date of the most recent check.

412.36 Periodic criminal background checks for current employees and unsupervised volunteers shall be conducted when:

- (a) Derogatory information about the employee or unsupervised volunteer, of a nature that will impact the employee's or unsupervised volunteer's suitability to continue performing the duties of the covered position, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority; or
- (b) Information about a criminal offense committed by the employee or unsupervised volunteer, such as the criminal offenses listed in section 412.21 of this section, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority.

Section 412.37 is amended to read as follows:

412.37 An employee who fails a periodic criminal background check may be subject to administrative action up to and including removal. In determining the type of administrative action to be taken, the employing agency shall consider the factors listed in section 412.25 of this section as well as any other similar factors and variables, except that a criminal background check reflecting that an employee has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor shall result in removal.

A new section 412.38 is added to read as follows:

412.38 In addition to in, or in the place of administrative action, and at the employing agency's discretion, an employee who fails a periodic check may be reassigned to a non-covered position, except that this option shall not be available for an employee whose criminal background check reflects that he or she has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

Section 412.38 is renumbered as 412.39 and amended to read as follows:

412.39 An unsupervised volunteer who fails a periodic criminal background check may be terminated or moved to another volunteer assignment that does not include the provision of direct services to children or youth. In determining the type of action to be taken, the employing agency shall consider the factors listed in section 412.25 of this section, except that a criminal background check reflecting that the unsupervised volunteer has been convicted of, has pleaded nolo contendere, is on probation before judgment of a case upon a stet docket, or has been found not guilty for reason of insanity for any sexual offenses involving a minor shall result in the termination of the voluntary services.

Sections 412.39 and 412.40 are renumbered as 412.40 and 412.41, respectively:

412.40 In the case of an agency that violates any of the provisions of the Act, the Mayor (or his or her designee) or independent personnel authority may take administrative action, or direct that administrative action be taken, against the agency head or other agency official who violated the particular provision or provisions of the Act.

412.41 Criminal background check records obtained under this section shall be confidential and shall be for the exclusive purpose of making employment-related determinations under this section. The records shall not be released or otherwise disclosed to any person, except when:

- (a) Required as one component of an application for employment with a District government agency considered a covered child or youth services provider;
- (b) Requested by the personnel authority during an official inspection or investigation;
- (c) Ordered by a court;
- (d) Authorized by the written consent of the person being investigated; or
- (e) Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under Chapter 16 of these regulations.

Section 412.41 is renumbered as 412.42 and amended to read as follows:

412.42 An individual who discloses confidential information in violation of any of the provisions in section 412.41 of this section shall be guilty of a criminal offense and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one hundred eighty (180) days, or both.

Sections 412.42 and 412.43 are renumbered as 412.43 and 412.44, respectively:

412.43 Each personnel authority with agencies considered covered child or youth services providers shall prepare compliance reports every six (6) months beginning on the date that these regulations are effective. Each report shall be submitted to the Mayor and shall include:

- (a) The number of criminal background checks and traffic record checks conducted for appointees, the number of appointees who were hired upon completion of the check, and the number rejected; and
- (b) The number of periodic criminal background checks conducted for employees and unsupervised volunteers, and any administrative action initiated or taken upon completion of the periodic checks.

412.44 Agencies covered under the Act shall submit, to the Mayor, a list of positions subject to the criminal background check requirement on an annual basis by December 1st of every year.

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